

Misleading Communications About Expertise

The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise

Executive Summary

FINRA reminds firms of their obligation to supervise representatives' communications with the public used to establish their expertise. FINRA is concerned that some representatives are misrepresenting their investment acumen by using ghostwritten communications that mislead investors.

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Background & Discussion

Some vendors prepare and sell publications for use by registered representatives and other types of financial intermediaries. Certain publications enable the purchaser to affix his name or otherwise imply that the purchaser is the author. The following describes some of these communications:

- ▶ Hard-cover books or pamphlets on investment topics that can be purchased with the representative's name printed on the cover, thereby implying the representative wrote the book or pamphlet.
- ▶ Newspaper, magazine or Web articles where the public might reasonably assume the representative is the author, when this is not the case.

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Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Municipal
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Training

Key Topics

- ▶ Communications with the Public
- ▶ Ghostwritten Communications
- ▶ Representatives' Use of Designations and Titles
- ▶ Supervision
- ▶ Third-Party Marketing Material

Referenced Rules & Notices

- ▶ NASD Rule 2110
- ▶ NASD Rule 2120
- ▶ NASD Rule 2210
- ▶ NYSE Rule 472
- ▶ Regulatory Notice 07-43

- ▶ Interview-style broadcasts, webcasts or other public appearances where it appears that an independent third party is interviewing a representative when the interview questions and answers are in fact pre-determined; or, in the case of printed interviews, where the questions and answers were created by or for the representative.
- ▶ Handouts in the form of magazines that appear to contain articles written by or about the representative when, in fact, they are produced by a vendor at the request of the representative. In some cases, the representative further misrepresents his or her credibility by including his or her photograph next to a photograph of a well-known financial or political figure.

FINRA reminds broker-dealers that they must supervise the use of these types of communications by their registered representatives. NASD Rule 2210 prohibits false, misleading or exaggerated communications with the public and the omission of material facts or qualifications that would cause a communication to be misleading. All communications must comply with principles of fair dealing and good faith. Some of these communications appear to raise serious questions of compliance with these standards.

As noted in *Regulatory Notice 07-43*, some third-party vendors market ghostwritten books on senior investing to registered representatives as tools to establish credibility. As stated in the Notice, implying that one is the author of a book on senior investing, and therefore an expert, could violate a number of rules, including NASD Rules 2110, 2120 and 2210 and Incorporated NYSE Rule 472.¹ These concerns would apply to any ghostwritten publication.

Registered representatives may not suggest (or encourage others to suggest) that they authored investment-related books, articles or similar publications if they did not write them. Such a publication created by a third-party vendor must disclose that it was prepared either by the third party or for the representative's use. FINRA also reminds firms that they must prominently disclose their names in all advertisements and sales literature as required by Rule 2210.

If a firm or representative has paid for the publication, production or distribution of any communication that appears to be a magazine, article or interview, then the communication must be clearly identified as an advertisement. FINRA regards this information as material to ensuring that such communications are not misleading.

Regulatory Notice 07-43 also states that firms that allow the use of any title or designation that conveys an expertise in senior investments or retirement planning where such expertise does not exist may violate NASD Rules 2110 and 2210, Incorporated NYSE Rule 472 and, possibly, the antifraud provisions of the federal securities laws. This concern applies to the misuse of any title or designation in a manner that exaggerates the representative's expertise or implies expertise where none exists. In addition, some states prohibit or restrict the use of certain senior designations.

Firms must supervise their registered representatives in a manner reasonably designed to ensure that they do not engage in the deceptive practices identified above.

Endnotes

- 1 The FINRA rulebook currently consists of both NASD rules and certain NYSE rules that FINRA has incorporated (Incorporated NYSE Rules), including NYSE Rule 472 (Communications With the Public). The Incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as "Dual Members." Dual Members also must comply with NASD rules. Until the adoption of a Consolidated FINRA Rulebook, FINRA's *Regulatory Notices* will address both NASD and the Incorporated NYSE Rules.

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