



Advertising Regulation Conference

Washington, DC October 9 – 10, 2014

Advertising Regulation Boot Camp Thursday, October 9, 2014 9:00 a.m. – 10:30 a.m.

Learn the core principles of the advertising rules from FINRA experts. Designed for compliance and marketing professionals who are new to the advertising rules or experienced practitioners interested in a refresher, this pre-conference session provides what you need to know when applying both FINRA and SEC rules to financial services advertisements and marketing materials. Led by Advertising Regulation Department senior staff, the presentation covers the fundamental rule requirements and their underlying principles.

Welcome: Thomas A. Pappas
Vice President
FINRA Advertising Regulation

Moderator: Pramit K. Das
Assistant Director
FINRA Advertising Regulation

Panelists: Gregory J. Riviello
Director
FINRA Advertising Regulation

Amy C. Sochard
Senior Director
FINRA Advertising Regulation

- I. Role of the Advertising Regulation Department
- II. Overview of Applicable Rules
- III. FINRA Rule 2210: Definitions, Approval, Review, Recordkeeping, & Filing Requirements
- IV. FINRA Rule 2210: Content Standards
- V. SEC Rules Applicable to Investment Company Communications
- VI. Variable Insurance Products: Applicable Rules & Standards
- VII. FINRA Rule 2212: Investment Company Rankings
- VIII. Guidance on Social Media
- IX. Questions & Answers



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Advertising Regulation Boot Camp Learning Objectives

By the end of the session, you should know:

1. The role of the Advertising Regulation Department.
2. The applicable FINRA, SEC, MSRB, and SIPC rules.
3. The definitions, approval, review, recordkeeping, and filing requirements in FINRA Rule 2210.
4. How to comply with the content standards of FINRA Rule 2210.
5. How to apply the SEC rules to investment company communications.
6. The rules and standards applicable to variable insurance products.
7. How to apply FINRA Rule 2212 (investment company rankings).
8. The FINRA regulatory notices that provide guidance on social media.

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FINRA Advertising Regulation Department

- Advertising Filings Review Program
- Investigations
- Sweeps
- Member Outreach and Education

Contact Information:

Website: www.finra.org/Advertising

Telephone Number: 240-386-4500

Overview of FINRA Rules

■ FINRA Rules

- 2210 - Communications with the Public
- 2212 - Use of Investment Companies Rankings in Retail Communications
- 2213 - Requirements for the Use of Bond Mutual Fund Volatility Ratings
- 2214 - Requirements for the Use of Investment Analysis Tools
- 2215 - Communications with the Public Regarding Security Futures
- 2216 - Communications with the Public About Collateralized Mortgage Obligations (CMOs)
- 2220 - Options Communications
- NASD IM-2210-2 - Communications with the Public About Variable Life Insurance and Variable Annuities
- NASD Rule 2711(h) - Disclosure Requirements for Research Reports

- 3010 - Supervision
- 3160 - Networking Arrangements between Members and Financial Institutions

Overview of Other Regulators' Advertising Rules Enforced by FINRA

- **SEC Rule 482 – Advertising by an Investment Company as Satisfying Requirements of Section 10**
- **SEC Rule 34b-1 – Sales Literature Deemed to be Misleading**
- **SEC Rule 135A – Generic Advertising**
- **SEC Rule 134 – Communications Not Deemed a Prospectus**
- **SEC Rule 433 – Conditions to Permissible Post-Filing Free Writing Prospectuses**
- **Municipal Securities Rulemaking Board (MSRB) Rule G-21 - Advertising**
- **Securities Investor Protection Corporation (SIPC) Advertising By-Law Article 11, Section 4**

FINRA Rule 2210: Definitions

Retail Communication

- Any written or electronic communication distributed to more than 25 retail investors within any 30 calendar day period

Correspondence

- Any written or electronic communication distributed or made available to 25 or fewer retail investors within any 30 calendar-day period

Institutional Communication

- Any written or electronic communication distributed or made available only to institutional investors
- Does not include a member's internal communications

FINRA Rule 2210 - Supervision of Institutional Communications and Correspondence

■ Institutional Communications

- Flexible Supervision:
 - Risk-Based Procedures
 - Training
 - Surveillance
 - Follow-Up to Correct Problems
- Internal use only communications used within a single broker dealer are not subject to FINRA Rule 2210; however, each firm must adopt procedures to supervise this area of its business.

■ Correspondence

- Flexible Supervision under FINRA's Supervision Rules

FINRA Rule 2210 - Internal Approval of Retail Communications

- **An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.**
- **Exceptions from principal approval include:**
 - retail communications, supervised in the same manner as correspondence, that:
 - do not make any financial or investment recommendation or promote a product or service;
 - are posted to an online interactive electronic forum (social media);
 - are excepted from the definition of “research report” (e.g., market letters); and
 - retail communications, filed by another firm, and found by FINRA to be consistent with standards.

FINRA Rule 2210 - Recordkeeping

- **Retain all communications for 3 years as required by the Securities Exchange Act of 1934 (SEA) Rule 17a-4(b).**
- **Records for retail and institutional communications must include:**
 - a copy of the communication and the dates of first and last use;
 - the name of the registered principal approving the communication;
 - the date of approval; and
 - information concerning the source of any statistical table, graph, or illustration.

FINRA Rule 2210 - Filing Requirements – Retail Communications

- **Filing requirements apply only to certain retail communications used with more than 25 retail customers within 30 calendar days.**
- **Communications that must be filed 10 business days prior to first use:**
 - New member firms must file certain retail communications for one year based on their membership effective date. These include:
 - Electronic or public media (i.e. any generally accessible website, newspaper, magazine, radio, television, signs, and billboards.)
 - Security futures
 - Registered investment company ranking that is not generally published or is the creation of the investment company
- **Options retail communications used prior to delivery of the Options Disclosure Documents (ODD) must also be filed 10 calendar days prior to use. (See FINRA Rule 2220.)**

FINRA Rule 2210 - Filing Requirements – Retail Communications

■ Retail communications that must be filed within 10 business days of first use include:

- registered investment companies
 - mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities, and variable life insurance products;
- public direct participation programs;
- investment analysis tool templates and reports; and
- CMOs and derivative products registered under the Securities Act of 1933.

FINRA Rule 2210 - Exceptions to the Filing Requirements

- Institutional Communications
- Correspondence
- Non-Commissioned Reprints or Excerpts of any Article Issued by an Unaffiliated Publisher without Material Change
- Retail Communications that do not Make any Financial or Investment Recommendation or Otherwise Promote a Product or Service
- Previously-Filed Material
- Statistical or Non-Narrative Updates to Previously-Filed Template Communications
- Interactive Social Media Posts

FINRA Rule 2210 - Exceptions to the Filing Requirements

- “Laundry list” of Investment Products
- Press Releases Made Available Only to the Media
- Press Releases Issued by Closed-End Investment Companies that are Subject to the NYSE’s “Immediate Release Policy” under Section 202.06
- Research Reports on Exchange-Listed Securities
- Free Writing Prospectuses that are not Required to be Filed with the SEC
- Prospectuses

Submitting Communications to FINRA

- **Communications subject to the filing requirements must be filed with the Advertising Regulation Department.**
- **The Department will also accept voluntary filings.**
- **Filings should be sent electronically through the Advertising Regulation Electronic Files (AREF) system.**
- **Filing submissions should include the:**
 - descriptive title of ad; name and title of the registered principal approving the communication; date of approval; actual or anticipated date of first use; and intended audience and use.
- **Firms will receive review letters electronically.**
 - Firms may request a follow-up discussion of a review letter.

FINRA Rule 2210 - Content Standards

■ General Standards for all Communications

- Communications must be fair and balanced, and must provide a sound basis for evaluating the facts regarding any product or service.
- Material information that would cause the communication to be misleading may not be omitted:
 - For example, risks, fees, and restrictions or conditions.
- False, exaggerated, unwarranted, promissory, or misleading statements or claims are prohibited.
- Important or material information should not be in legends and footnotes.

FINRA Rule 2210 - Content Standards

■ General Standards for all Communications

- Clarity and Context
- Nature of the Audience
- Communications may not predict or project performance or imply that past performance will recur, except:
 - Hypothetical illustrations of mathematical principles (compound interest) that do not predict or project performance;
 - Investment analysis tools (FINRA Rule 2214); and
 - Reasonable price targets in research reports (NASD Rule 2711).

FINRA Rule 2210 – Other Content Standards

■ Retail Communications and Correspondence

- Disclosure of FINRA Member Name
- Disclosure Regarding Tax-Free Claims and Tax-Deferred Compounding
- Disclosure of Fees and Expenses for Open-End Mutual Fund Performance
- Disclosures Regarding Testimonials
- Use of FINRA Name and Linking to the FINRA Website

■ Retail Communications

- Comparisons must Disclose all Material Differences
- Recommendations: Disclosure Concerning Conflicts of Interest

FINRA Rule 2210 - Public Appearances

- Rule covers participation in seminars, forums, radio or TV interviews, or other unscripted speaking activities.
- General content standards apply.
- Associated persons must have a reasonable basis for any recommendations and must disclose:
 - the nature of any more than a nominal financial interest; and
 - any other actual material conflict of interest.
- Each firm must establish appropriate procedures for the supervision of public appearances.
- Videos or audio recordings of public appearances placed on a website are considered static content.

SEC Rules Applicable to Investment Company Communications

- **SEC Rule 482, under the Securities Act of 1933, governs communications used prior to delivery of the prospectus.**
- **SEC Rule 34b-1, under the Investment Company Act of 1940, governs communications used after delivery of the prospectus.**
- **SEC Rule 135a, under the Securities Act of 1933, applies to generic communications about investment company securities. Although such communications may not refer to a particular fund or security, they may describe services/benefits offered by a sponsor/complex, invite readers to request further information, and include details about the distributor.**

SEC Rule 482

■ Prospectus Offer – Include All Four Elements

■ Disclosure Language

- Money Market Legend
- Performance – Eight Elements
 - Performance data represents past performance;
 - Past performance does not guarantee future results;
 - Current performance may be lower or higher than performance data quoted;
 - Investment return and principal value will fluctuate;
 - When redeemed, shares may be worth more or less than their original cost;
 - Identify a source to obtain performance current to the most recent month-end;
 - Disclose, as applicable, maximum amount of sales load or other nonrecurring fee; and
 - If load or fee not reflected, load or fee would reduce performance.

Note: Requirements for Expense Ratio - FINRA Rule 2210(d)(5)

SEC Rule 482

■ Presentation Standards

- Five Requirements
 - Legibility
 - Type size
 - Type style
 - Prominence
 - Proximity
- Specialized Disclosure Requirements for Electronic Media, Radio, or Television Advertisements

SEC Rule 482

■ Performance Standards

- Non-Money Market Funds
 - Current Yield
 - Tax-Equivalent Yield
 - Average Annual Total Return (1-, 5-, and 10-year periods or since inception and current to most recent calendar quarter end)
 - After-Tax Return
 - Other Performance Measures
- Money Market Funds
 - Yield
 - Total Return

SEC Rule 34b-1

■ Applied to Supplemental Sales Material

- Material Preceded or Accompanied by a Current Fund Prospectus

■ Standards are Consistent with Those of SEC Rule 482

- Performance
- Presentation Standards
- For Money Market Funds, Include the Money Market Fund Disclosure

Variable Insurance Products

■ Applicable Rules

- NASD IM-2210-2 Communications with the Public About Variable Life Insurance and Variable Annuities
- SEC Rule 482 applies to communications used prior to prospectus delivery.
- SEC Rule 34b-1 applies to communications used after prospectus delivery.

■ Content Considerations

- Product Identification
- Liquidity
- Claims About Guarantees

■ Hypothetical Illustrations

- Standard Ledger (0% with guaranteed charges and any other assumed rate not exceeding 12%)
- Supplemental Illustrations

Variable Insurance Products

■ Historical Performance for Variable Annuities

- SEC Rule 482 performance standards apply.
- Returns must be keyed off the inception date of the separate account.

■ Historical Performance for Variable Life Insurance:

- Typically appears in supplemental sales material.
- General standards of FINRA Rule 2210 apply.
- Identify the fees and charges deducted; identify the fees and charges not deducted; and disclose that performance would have been significantly lower if all fees and charges had been deducted.

FINRA Rule 2212: Investment Company Rankings

Excerpt

PPA Large-Cap Equity Fund (LCEFA)

Criteria on which the ranking is based

A domestic equity fund investing in large-cap stocks that has competitive marks among its peers.

Based on total return, the Large-Cap Equity Fund placed within the highest 10% of funds in the 1-, 5-, and 10-year rankings by PKD Ranking Services in the Large-Cap Equity Category.

LCEFA	1-Year	5-Year	10-Year
As of 09/30/2014	17 out of 285	20 out of 254	12 out of 186

Ending date of the period

Length of the period

Number of investment companies in the category

Name of the ranking category

Name of the ranking entity

Past performance is no guarantee of future results. PKD Rankings — PKD Analytical Services, Inc. is an independent publisher of mutual fund rankings, records rankings for these and other PPA Funds for one-year, three-year, five-year, and ten-year total returns periods. PKD Analytical Services compares mutual funds within a universe of funds with similar investment objectives, including dividend reinvestment. PKD Rankings are based on total return at net asset value and do not reflect sales charges. PKD Rankings do not imply that the fund had a high total return.

**PolhamusPinto Distributors
Member FINRA**

Social Media – FINRA Regulatory Notices

10-06 Guidance on Blogs and Social Networking Websites (January 2010)

- Recordkeeping Responsibilities
- Suitability Responsibilities
- Types of Interactive Electronic Forums
- Supervision of Social Media Sites
- Third-Party Posts

11-39 Social Media Websites and the Use of Personal Devices for Business Communications (August 2011)

- Recordkeeping
- Supervision
- Links to Third-Party Sites
- Data Feeds

In addition: SEC IM Guidance Update 2013-01 – March 2013

Questions and Answers