



2021 FINRA Virtual Conference Panel: Back to Basics: Fundamentals of FINRA Rule 2210

Advertising Compliance Boot Camp:
Fundamentals of FINRA Rule 2210 (Back to Basics)

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Panelists

○ Moderator

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○ Panelists

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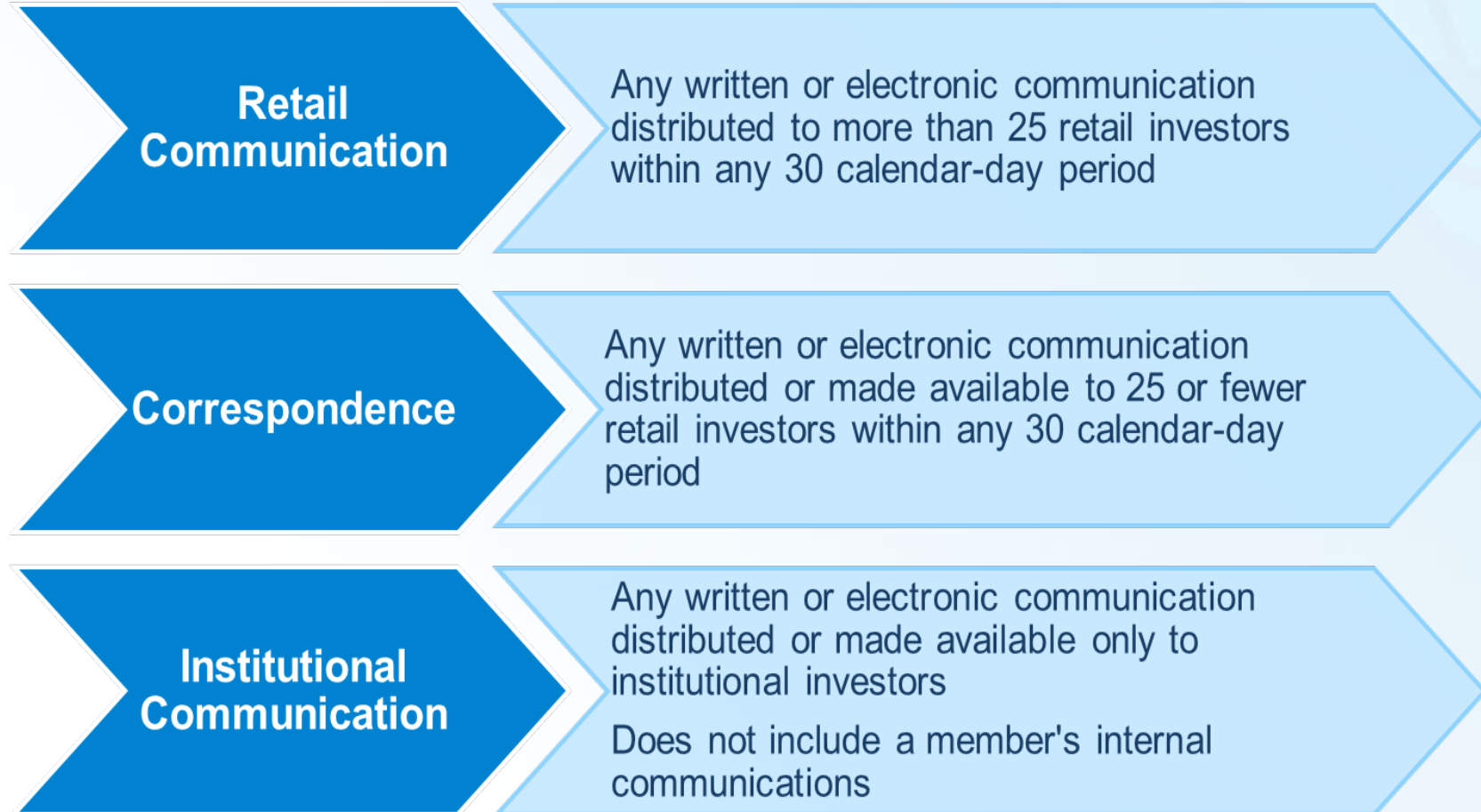
FINRA Advertising Regulation Department

- Advertising filings review program
- Complex reviews
- Sweeps
- Member outreach and education
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FINRA Rule 2210. Introduction and Definitions



Supervision of Institutional Communications

○ 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. Each firm must adopt procedures to supervise this area of its business.

Supervision of Correspondence

○ Correspondence

- Flexible supervision:
 - > Risk-based procedures
 - > Training
 - > Surveillance
 - > Follow-up to correct problems

Internal Approval of Retail Communications

- An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.
 - Exceptions 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 on an online interactive electronic forum (social media);
 - > Are excepted from the definition of “research report” (e.g., market letters); and
 - > Are filed by another firm and found by FINRA to be consistent with standards.

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:
 - Copy of the communication and the dates of first and last use;
 - Name of the registered principal approving the communication;
 - Date of approval; and
 - Information concerning the source of any statistical table, graph, or illustration.

Filing Requirements for Retail Communications

- Filing requirements apply only to certain retail communications.
- Retail 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.)
 - Registered investment company ranking that is not generally published or is the creation of the investment company.
 - Communications concerning security futures.
 - Options communications used prior to delivery of the options disclosure document.

Filing Requirements for Retail Communications

- Retail communications that must be filed within 10 business days of first use:
 - Promotion or recommendation of specific registered investment companies or families:
 - > Mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities, and variable life insurance products;
 - Public direct participation programs; and
 - CMOs and derivative products registered under the Securities Act of 1933.

Exceptions to the Filing Requirements

- Institutional communications and correspondence
- Independently prepared reprints or excerpts of articles issued by unaffiliated publishers used without material change
- Retail communications that do not make any financial or investment recommendation or promote a product or service
- Previously filed communications not materially changed
- “Laundry list” of investment products

Exceptions to the Filing Requirements

- Statistical or non-narrative updates to previously filed templates
- Templates containing non-predictive narrative information
- Press releases made available only to the media
- Research reports on exchange-listed securities
- Interactive social media posts
- Prospectuses, annual/semi-annual reports filed with the SEC
- Free writing prospectuses not required to be filed with the SEC

General 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.
- Material information should not be in legends and footnotes.

General 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 for:
 - > Hypothetical illustrations of mathematical principles, such as compound interest, that do not predict or project performance;
 - > Investment analysis tools (FINRA Rule 2214); and,
 - > Reasonable price targets in equity research reports (FINRA Rule 2241).

FINRA Rule 2210 Specific Content Standards

- **Retail communications and correspondence**
 - FINRA member name
 - Tax-free claims and tax-deferred compounding
 - Fees and expenses for open-end management investment company performance
 - Testimonials

Specific Content Standards

- **Retail communications**
 - Comparisons must disclose all material differences
 - Recommendations: disclosure concerning conflicts of interest
 - BrokerCheck
- **All communications**
 - Use of FINRA name and linking to the FINRA website

SEC Rules – Investment Company Communications

- SEC Rule 482 governs communications used prior to delivery of the prospectus.
 - Performance Standards
 - Disclosure Requirements
 - Presentation Standards
- SEC Rule 34b-1 governs communications used after delivery of the prospectus and cross references Rule 482.
- SEC Rule 135a applies to a generic investment company communication that does not refer to any particular fund or security.

FINRA Rule 2211 – Variable Insurance Products

- **Specific Standards for Variable Annuity and Variable Life Insurance Communications**
 - Identify and provide a sound basis to evaluate the product.
 - Address the risks.
 - Disclose fees, tax liabilities and potential penalties.
 - Balance any discussion of investment features with a discussion of the insurance component.
 - Disclose the long-term nature of a Variable Annuity, *particularly for retirement*.
 - When addressing riders, clearly explain how they work.
 - Explain limitations of any guarantees mentioned.

Variable Insurance Product Performance Standards **FINRA**

○ **Variable Annuities:**

- Apply SEC Rule 482 or 34b-1.
- Net of fees & expenses.
- Keyed off inception date of separate account.

○ **Variable Life Insurance:**

- Apply FINRA Rule 2210(d)(1)(A).
- At a minimum, deduct investment option management fees.
- Prominently disclose fees/charges deducted & not deducted.

Social Media: Core Concepts

Personal vs. Business Use

***Recordkeeping**

Static vs. Interactive Communications

***Supervision**

Adoption and Entanglement

***Third-party content**

Social Media: FINRA Regulatory Notices

10-06: Guidance on Blogs and Social Networking Web Sites (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 feed

17-18: Guidance on Social Networking Websites and Business Communication (April 2017)

- Text messaging
- Personal communications
- Hyperlinks and sharing
- Native advertising
- Testimonials and endorsements
- Correction of third-party content
- BrokerCheck

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

Resources – FINRA Advertising Rules

- FINRA Rule 2210. Communications with the Public
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2210
- FINRA Rule 2211. Communications with the Public about Variable Life Insurance and Variable Annuities
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2211
- FINRA Rule 2212. Use of Investment Companies Rankings in Retail Communications
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2212
- FINRA Rule 2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2213
- FINRA Rule 2214. Requirements for the Use of Investment Analysis Tools
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2214
- FINRA Rule 2215. Communications with the Public Regarding Security Futures
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2215
- FINRA Rule 2216. Communications with the Public about Collateralized Mortgage Obligations
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2216

Resources – FINRA Advertising Rules

- FINRA Rule 2220. Options Communications
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2220
- FINRA Rule 2241. Research Analysts and Research Reports
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2241
- FINRA Rule 2242. Debt Research Analysts and Debt Research Reports
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/2242
- FINRA Rule 3110. Supervision
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/3110
- FINRA Rule 3160. Networking Arrangements between Members and Financial Institutions
 - > www.finra.org/rules-guidance/rulebooks/finra-rules/3160

Resources – SEC Advertising Rules Enforced by FINRA

- SEC Rule 482 – Advertising by an Investment Company as Satisfying Requirements of Section 10
 - > www.govinfo.gov/content/pkg/CFR-2010-title17-vol2/pdf/CFR-2010-title17-vol2-sec230-482.pdf
- SEC Rule 34b-1 – Sales Literature Deemed to be Misleading
 - > https://gov.ecfr.io/cgi-bin/text-idx?SID=49c9975ec264654255254708eeb4d17c&mc=true&node=se17.4.270_134b_61&rgn=div8
- SEC Rule 135A – Generic Advertising
 - > https://gov.ecfr.io/cgi-bin/text-idx?SID=49c9975ec264654255254708eeb4d17c&mc=true&node=se17.3.230_1135a&rgn=div8
- SEC Rule 134 – Communications Not Deemed a Prospectus
 - > https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=49c9975ec264654255254708eeb4d17c&mc=true&n=pt17.3.230&r=PART&ty=HTML#se17.3.230_1134
- SEC Rule 433 – Conditions to Permissible Post-Filing Free Writing Prospectuses
 - > https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=49c9975ec264654255254708eeb4d17c&mc=true&n=pt17.3.230&r=PART&ty=HTML#se17.3.230_1433

Resources – MSRB and SIPC Advertising Rules Enforced by FINRA

- MSRB Rule G-21 - Advertising by Brokers, Dealers or Municipal Securities Dealers
 - > www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-21.aspx
- SIPC Advertising By-Law Article 10, Section 4 – Member Advertising
 - > www.sipc.org/about-sipc/statute-and-rules/bylaws#10