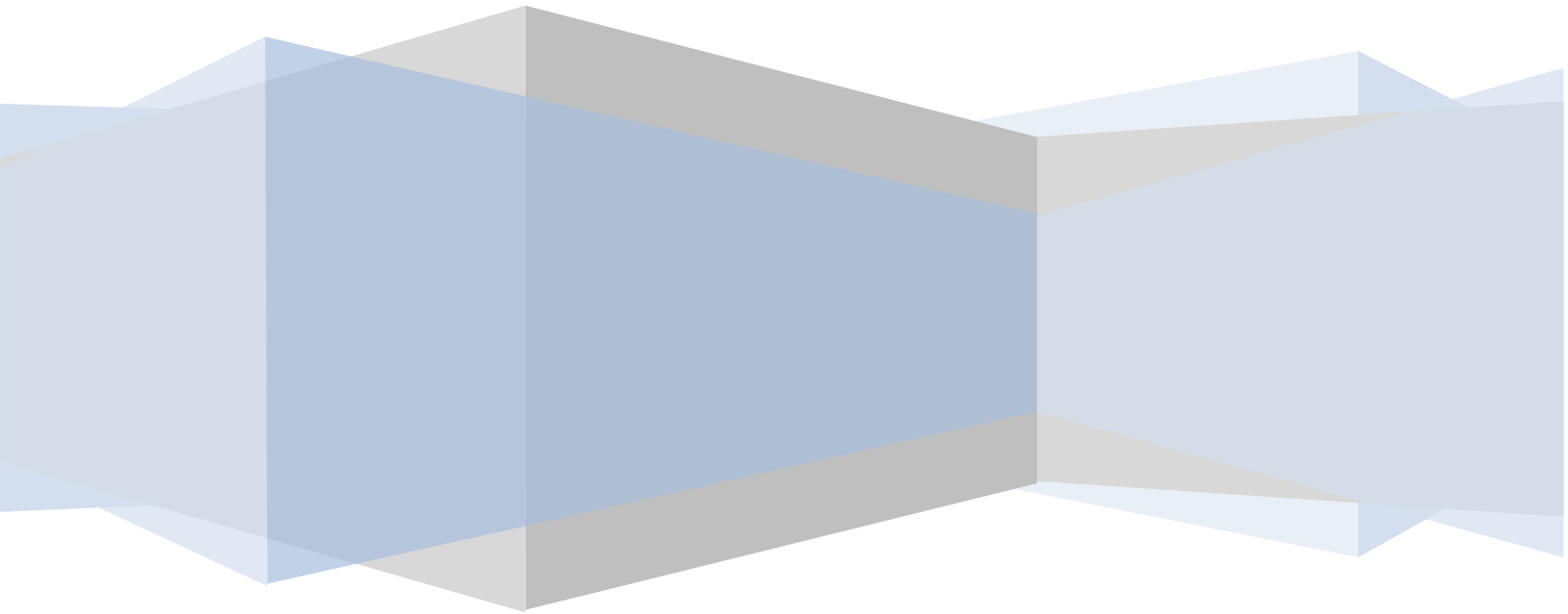
FINANCIAL SOCIAL MEDIA™

Compliance Guide

Guidance for Financial Industry Professionals Engaging in Social Networking Sites



Online Compliance Overview

With data from the Pew Internet and American Life Project showing that the number of adults logging on to and using social media sites has grown from a mere 8 percent in 2005 to a whopping 46 percent in 2009, social media may well be the greatest phenomenon of the 21st century. In order to keep pace with this new speed of business and increased client expectations, odds are your firm has also joined the social media community. Yet this budding business opportunity also brings new risks and challenges; therefore, the Financial Industry Regularity Authority (FINRA) has issued further guidelines regarding how broker/dealers and firms can use — and oversee — social media communications.

The regulatory organization first determined in March 1999 that any registered representative who participates in Internet chat rooms are subject to the same regulations that would govern an in-person presentation before a group of prospects or investors, a tenet codified in 2003 when the term "public appearance" was defined in NASD Rule 2210. But firms were still seeking answers to difficult questions, including participation in live or interactive media such as blogs, so FINRA convened a Social Networking Task Force — a group including both FINRA staff and industry representatives — in September of 2009 to further establish guidelines and policies to help prevent a firm's personnel from inadvertently running afoul of the NASD's Rule 2310 suitability requirements and regulations.

In January 2010 FINRA introduced Regulatory Notice 10-06 with the goal to ensure that investors are protected from false or misleading claims and representations, and firms are able to effectively and appropriately supervise participation in these sites. At the same time, FINRA is seeking to interpret its rules in a flexible manner to allow firms to communicate with clients and investors using this new technology.*

WHAT YOU NEED TO KNOW

Given the numerous ways in which information and personal thoughts can now be transmitted across web-based media — particularly via social networking sites such as Facebook, LinkedIn, Twitter and YouTube — FINRA Notice 10-06 holds that the use of Internet-based social media communications must be viewed and monitored in the very same way as are written communications and in-person conversations. Therefore, these regulations and suitability requirements also apply to any forms of advertisement, sales literature and correspondence when used in social media situations.

The rules prescribed by FINRA Rule 2210/2211 require either the approval from a registered principal of the firm or broker/dealer, supervision or

monitoring, or flat-out prohibition when it comes to using six primary social media platforms: LinkedIn, Twitter, Facebook, YouTube, public websites, and emails or instant messages sent to "retail prospects." Essentially, compliance with these rules all boils down to what they determine to be "static" content versus "interactive electronic forum."

A Summary of FINRA's Current Social Media Policies

STATIC CONTENT REGULATION

FINRA considers static postings to constitute "advertisements" under Rule 2210. As with other Web-based communications such as banner advertisements, a registered principal of the Firm must approve all static content on a page of a social networking site established by the firm or a registered representative before it is posted.* It is also necessary to keep records of all content and changes made.

Examples of Static Content

- Website content
- Social network profiles
- Social network background images

INTERACTIVE CONTENT REGULATION

The majority of social media usage will fall under interactive content as participation in social media is essentially contributing to the conversations taking place in social networks. Prior principal approval is not required under Rule 2210 for interactive electronic forums however firms must supervise these interactive electronic communications under NASD Rule 3010 in a manner reasonably designed to ensure that they do not violate the content requirements of FINRA's communications rules. Additionally, firms must retain records of all communication via social networks as required by Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and NASD Rule 3110.*

Examples of Interactive Content

- Blog posts
- Tweets
- Facebook status updates
- LinkedIn updates
- Comments
- Instant messaging
- Webinars

SUITABILITY

Social Media networks provide firms the opportunity to engage with and provide value to their clients and prospects. They are not a place to advertise and push product however if a firm or its personnel decides to

recommend a security through a social media site they must be in compliance with NASD Rule 2310 regarding suitability. Rule 2310 requires a broker-dealer to determine that a recommendation is suitable for every investor to whom it is made.

Examples of potentially appropriate and inappropriate usage:

It would **NOT** be appropriate to recommend a product to your entire network via a post to a social network

It may be appropriate to recommend a product to an individual with whom you have been communicating via private conversation on a social network

THIRD PARTY POSTS

Independent posts made by *third parties or clients* generally do not fall under FINRA regulations, so they generally require simple monitoring of this type of content. However, these posts can be attributed to the broker/dealer in instances where:

A firm or its personnel becomes "entangled," or involved, with the preparation of any "third- party" posts and comments

The broker/dealer either implicitly or explicitly endorses or otherwise approves of this content

FINRA would consider third-party comments or posts that a firm "adopts" by endorsing or otherwise approving said content after it's been posted

RECORDKEEPING RESPONSIBILITIES

Since the responsibility to ensure suitability ultimately lies with the firm and its registered principals, they must develop a recordkeeping strategy to record any social media communications made by the firm's personnel. And with so many channels of nuance, this is no small feat.

In response to this challenge, many technology providers are beginning to design software programs to perform this function automatically. Although FINRA does not endorse any such programs, many firms find it's a technology certainly worth pursuing.

** FINRA's Guide to the Internet for Registered Representatives, SEC's Rules Under the Investment Advisers Act of 1940, FINRA Regulatory Notice 10-06*

About Financial Social Media

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Contact Us

800-837-6330
info@financialsocialmedia.com
www.financialsocialmedia.com

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