

Quick Reference Matrix: Broker-Dealer Communications in Social Media



SEC and FINRA Compliance

TYPE OF SOCIAL MEDIA COMMUNICATION	General Content Standards <i>FINRA Rule 2110</i>	Supervisory Requirements <i>NASD Rule 3010 FINRA Rule 2210</i>	FINRA Filing Requirements <i>FINRA Rule 2110</i>	SEC Filing Requirements § 24(b) of the 1933 Act Rule 497 under the 1933 Act SEC Guidance Update March 2013	Research/Qualified Knowledge Requirements <i>FINRA Rules 2110, 2111, 2114</i>		Principal Preapproval Requirements <i>FINRA Rule 2110</i>	
					No investment recommendation	Investment recommendation is made (objective facts and circumstances inquiry)	No investment recommendation is made and no specific product/service of the broker-dealer is promoted	Investment recommendation or broker-dealer product/service promotion made
General social media communications and postings (Includes blog posts, profile information and anything else reasonably deemed to be "static")	<p>All communications must be based on principles of fair dealing and good faith and must provide a sound basis for evaluating any security, industry, or service. Communications must fairly balance any benefits with potential risks.</p> <p>Communications must be clear and cannot include any false, exaggerated, misleading statements, and material facts cannot be omitted. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.</p> <p>Communications may not predict or project future performance or imply that past performance will recur, but communications may include a hypothetical illustration of mathematical principles or a price target contained in a research report that has a fully disclosed reasonable basis.</p>	<p>A broker-dealer must develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written and electronic correspondence.</p> <p>Such procedures for the review of correspondence must include provisions for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.</p>	<p>The communication must be filed with FINRA at least 10 days prior to its first use if it provides non-standardized rankings of a registered investment company, addresses securities futures, or addresses bond mutual fund volatility rankings.</p> <p>Must be filed with FINRA within 10 days of its first use if it addresses direct participation programs, investment analysis tools, collateralized mortgage obligations, or a derivative if a communication regarding the underlying security would require filing that communication with FINRA.</p>	<p>The communication must (generally) be filed with the SEC when the FINRA filing requirements are implicated.</p> <p>Specifically, three copies of any advertisement or marketing material in connection with public offerings must be filed with the SEC within 10 days. Five copies of every prospectus sent to a prospective investor must be filed with the SEC before the prospectus is sent.</p> <p>However, interactive communications that are merely responding to requests or inquiries from social media users or forwarding previously filed content do NOT need to be filed. Examples of communications that do not need to be filed include mere incidental mentions of broker-dealers that do not discuss the merits of an investment, incidental uses of the word "performance," and responses to social media user inquiries that provide discrete factual information but is not related to a discussion of the merits of the fund.</p>	N/A	<p>Must conduct a reasonably diligent review of customer's investment profile to determine that the recommendation is suitable for the customer.</p> <p>If a testimonials is included, the person making the testimonial must have sufficient knowledge and experience to form a valid opinion.</p>	<p>No preapproval of the communication is required; Satisfying the correspondence supervision requirements (training, written policies, surveillance, post-review) is sufficient.</p>	<p>The communication must be preapproved by a registered principal.</p>
Unscripted Public Appearances in Video or Typewritten Chat Rooms or Other Interactive Forums (Includes tweets, Facebook wall posts and anything else reasonably deemed to be "interactive")	<p>All communications must be based on principles of fair dealing and good faith and must provide a sound basis for evaluating any security, industry, or service. Communications must fairly balance any benefits with potential risks.</p> <p>Communications must be clear and cannot include any false, exaggerated, misleading statements, and material facts cannot be omitted. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.</p> <p>Communications may not predict or project future performance or imply that past performance will recur, but communications may include a hypothetical illustration of mathematical principles or a price target contained in a research report that has a fully disclosed reasonable basis.</p>	<p>A broker-dealer must establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances.</p> <p>Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to.</p>	N/A	N/A	N/A	<p>If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation.</p>	N/A	<p>No preapproval of the communication is required; satisfying the correspondence supervision requirements (training, written policies, surveillance, post-review) is sufficient in email, messaging, or an online interactive forum (real-time communications tailored to specific people/group).</p>

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TYPE OF SOCIAL MEDIA COMMUNICATION	Endorsement/ Adoption of Third-Party Content <i>FINRA Rule 2110</i>	Research Analyst Certification Requirements (Applies to research reports only) <i>Regulation AC, 17 C.F.R. § 242.500—505</i>	Record Keeping Requirements <i>FINRA Rule 2110</i> <i>Exchange Act Rule 17a-4, 17 C.F.R. § 240.17a-4</i>	Disclosure Requirements <i>FINRA Rule 2110</i> <i>NASD Rule 2711</i> <i>Exchange Act Section 15D, 15 U.S.C. § 78o-6</i>		
				Default required disclosures	Required disclosures only if a recommendation is made	Required disclosures if the communication is a research report (includes an analysis of equity securities of individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision and includes a recommendation)
General social media communications and postings (Includes blog posts, profile information and anything else reasonably deemed to be "static")	If a broker-dealer's representative takes an action that manifests an endorsement of the third-party content, such as a "like" on Facebook or a "retweet" on Twitter, then the principal preapproval, record keeping, content standards, and other requirements of FINRA Rule 2210 must be applied as if it was the broker-dealer's own original posting. Whether a broker-dealer is adopting or endorsing a third-party's posting is a "facts and circumstances" analysis. An explicit disclaimer that a social media action does not constitute an endorsement is relevant, but not determinative on its own.	Must certify that the views expressed "accurately reflect" the analyst's personal views. If the information was authored by an employee or associated person of the broker-dealer, the post must certify that either: No part of the analyst's compensation is, or will be, directly or indirectly related to the specific recommendations or views expressed by the research analyst; OR Part or all of the analyst's compensation was, or will be tied, to the specific recommendations or views expressed in the research report, that identifies the source, amount, and purpose of that compensation, and disclosing that the compensation "could influence the recommendations or views expressed in the research report.	Must maintain records of: • Copies of each communication and the dates the communication was first and, if applicable, last used; • The name of the registered principal who approved the communication and the date approval was given; • The name of the person who distributed any communication prior to its approval by a registered principal; • Information concerning the source of any statistics or illustrations used in the communication; and • For any communication that was not approved by a registered principal based on prior FINRA approval, the name of the member that filed the communication with FINRA and the review letter that FINRA provided approving the communication.	Must disclose (if applicable): • The broker-dealer's name (and other common names it does business under; • Its relationship with any party mentioned; and • If the communication includes other names, reflect which products or services are being offered by the member.	Must disclose if certain conflict of interests exist, including if the broker-dealer: (i) was making a market in the recommended securities, or the underlying security if the recommended security is an option or security future, or that the member or associated person will sell to or buy from customers on a principal basis; (ii) and/or its officers or partners have a financial interest in the securities of the recommended issuer and the nature of the financial interest, unless the extent of the financial interest is nominal; and (iii) was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended in the past 12 months. • Any other disclosures required to ensure that the recommendation is not misleading; • If a past recommendation is referred to, must list of all recommendations made for the previous year and accompanied by a disclaimer that past results cannot guarantee future performance; and • If a testimonial is given, must disclose that (i) the testimonial may not be representative of the experience of other customers; (ii) the testimonial is no guarantee of future performance or success; and (iii) if more than a \$100 is paid, that it is a paid testimonial.	Must disclose if: • The research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest; • The firm or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company; • Any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication; • The research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and • The firm or its affiliates managed a public offering of securities for the subject company in the past year, received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months. Exception: The disclosure requirements do not apply to reports authored by third parties if: • the broker dealer does not have any common officers or employees; • the broker-dealer has policies preventing the broker-dealer from influencing the third party research analyst; and • the report is provided on a website maintained by the broker-dealer.
Unscripted Public Appearances in Video or Typewritten Chat Rooms or Other Interactive Forums (Includes tweets, Facebook wall posts and anything else reasonably deemed to be "interactive")	If a broker-dealer's representative takes an action that manifests an endorsement of the third-party content, such as a "like" on Facebook or a "retweet" on Twitter, then the principal preapproval, record keeping, content standards, and other requirements of FINRA Rule 2210 apply as if it was the broker-dealer's own original posting. Whether a broker-dealer is adopting or endorsing a third-party's posting is a "facts and circumstances" analysis. An explicit disclaimer that a social media action does not constitute an endorsement is relevant, but not determinative on its own.	If appearance was made by a research analyst - The broker-dealer must make a record within 30 days after any calendar quarter in which the research analyst made a public appearance that contains the following: • A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and • A statement by the research analyst attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in such public appearances.	Must maintain records of: • Copies of each communication and the dates the communication was first and, if applicable, last used. For unscripted public appearances, any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications • The names of the persons who prepared outgoing correspondence and who reviewed the correspondence; and • Information concerning the source of any statistics or illustrations used in the communication.	Must disclose (if applicable): • The broker-dealer's name (and other common names it does business under; • Its relationship with any party mentioned; and • If the communication includes other names, reflect which products or services are being offered by the member.	If not a research analyst, must disclose (if applicable): • If the associated person or a member of the associated person's household has a financial interest in the securities of the subject company, and the nature of the financial interest; and • Any other actual, material conflict of interest of the associated person or broker-dealer of which the associated person knows or has reason to know at the time of publication.	If a research analyst - Must disclose (if applicable): • If, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the past 12 months; • If the research analyst received any compensation from the subject company in the past 12 months; or • If, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst.