



FINRA Rules Governing Communications with the Public Undergo Major Reorganization

The rules governing communications with the public have undergone significant changes with the approval of FINRA Rule 2210 (“Rule”) by the Securities and Exchange Commission (“SEC”). The Rule was submitted to the SEC by the Financial Industry Regulatory Authority (“FINRA”) and replaces NASD Rule 2210 (“Old Rule”). The Rule is effective February 4, 2013, and while there are many similarities with the Old Rule, the modifications to the categories of public communications are major and will impact the written supervisory procedures of all FINRA member firms that have communications with the public.

New Categories of Public Communications

The definition of “public communication” in the Old Rule was based upon sections related to advertisement, sales literature, independently prepared reprint and public appearances. The controlling definition of the Rule is now tied to “communications”, and that definition is based upon the categories of institutional communication, retail communication and correspondence.

Institutional Communications

Institutional communication includes written (including electronic) communications that are distributed or made available only to institutional investors, but does not include a firm’s internal communications. “Institutional investor” generally has the same definition as under current NASD Rule 2211(a)(3).

Retail Communications

Retail communication includes any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. “Retail investor” includes any person other than an institutional investor, regardless of whether the person has an account with the firm.

Correspondence

Correspondence includes any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

Supervision and Record Retention

While the Rule does not apply to a firm’s internal communications (including communications that are utilized to train or educate registered representatives), firms must still supervise and archive these communications.

The supervision and review of institutional communication and correspondence remains the same as set forth in current NASD Rule 2211 and 3010(d).

The Rule requires principal approval of retail communication before the earlier of its use or filing with FINRA, except for material that does not promote a product or service; postings on on-line interactive forums; material filed by another firm and approved by FINRA and certain research related material. Firms are still required to supervise and review the retail communications that are exempted in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d).

As a general rule record retention requirements for correspondence, retail communication and institutional communication have not changed from the Old Rule. Additionally, except for new member filing requirements, filing requirements with the FINRA Advertising department have also remained the same. New members will benefit from the Rule, as new members one-year filing requirement will commence on the date that the firms membership with FINRA becomes effective, rather than on the date a firm first files an advertisement with FINRA.

Action Items

In preparation for the Rule becoming effective, firms should consider taking the following action in the near future:

- Review and update their Written Supervisory Procedures to address the impact the Rule will have on the processes, policies and procedures currently utilized by a firm.
- Educate and train supervisors who are responsible for the review and approval of correspondence, retail communication and institutional communication on the changes made to the review process to address the Rule.
- Educate and train registered representatives on the revised review process and approval standards.
- Implement the Rule on or before the effective date.
- Back test compliance with the Rule within 30 days of implementation so as to confirm that the new processes are functioning properly and that the firm is in compliance with the Rule.

We hope that this information has been helpful to you. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by e-mail or phone, at 281-367-2454, or consult with your legal counsel or compliance consultant.

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