



2018 South Region Member Forum

October 18, 2018 | Atlanta, GA

Social Media and Digital Communications

Thursday, October 18

11:30 a.m. – 12:00 p.m.

FINRA and industry experts discuss the guidance provided in FINRA *Regulatory Notice 17-18*. Panelists address how firms have implemented the guidance and respond to follow-up questions. The panel also looks at emerging areas, such as how firms can stay in compliance when marketing online offerings as well as data privacy and protection.

Moderator: Grant Gibbons
Associate District Director, Sales Practice
FINRA New Orleans District Office

Panelists: Joelle Morris
Examination Manager, Sales Practice
FINRA Dallas District Office

Stephen Youhn
Chief Compliance Officer
ProEquities

Social Media and Digital Communications Panelist Bios:

Moderator:

Grant Gibbons is Associate District Director of the FINRA New Orleans District Office. He began his career in 1997 as an Examiner in the New Orleans District Office. In March 2004, Mr. Gibbons was promoted to Supervisor of Examiners in the Dallas District Office. He oversaw a team of examiners responsible for the regulation of member firms relating to financial and operational matters, sales practice concerns, surveillance monitoring, customer complaints and termination for cause reviews. In March 2014, he assumed the role of Examination Manager in the New Orleans District Office. In this role, he managed a team of cycle examiners and helped form and successfully led the New Orleans Fixed Income team. In July 2016, he was promoted to the Associate District Director of the New Orleans Office where he is responsible for the execution of the offices regulatory programs. Mr. Gibbons received a B.S. in Business Administration (Finance) from Auburn University in Auburn, Alabama.

Panelists:

Joelle Morris has been with FINRA for eight years. She began her career at FINRA as a cycle examiner, became a cause examiner in 2012, was promoted to Examination Manager in the Dallas District Office in 2016, and was most recently promoted to Associate Director of the Florida District Office in May 2018. Prior to joining FINRA, Ms. Morris worked for the Securities and Exchange Commission as an Examiner in the Division of Investment Management in New York. Ms. Morris received a BBA from Hofstra University in 2002, and will be graduating in December 2018 from the University of Texas at Dallas with both an MBA and an MS in Management.

Steve Youhn joined ProEquities as CCO in 2016 with more than 20 years of industry experience. Before ProEquities, he worked with The Vanguard Group where he was responsible for the broker/dealer compliance program. Mr. Youhn also served as CCO for Lincoln Financial Network's broker/dealers (Lincoln Financial Advisors Corporation and Lincoln Financial Securities Corporation) and M Financial Group's broker/dealer unit, M Holdings Securities. Before transitioning to compliance, Mr. Youhn served as Senior Counsel in the Chicago Board Options Exchange's legal department and the United States Securities and Exchange Commission's Division of Market Regulation. Mr. Youhn has a JD from Stetson University College of Law, a MBA from The University of Florida, and a Bachelor of Science from the University of South Florida. He holds the Series 7, 24, and 63 licenses.

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Panelists

■ Moderator

- **Grant Gibbons, Associate District Director, Sales Practice, FINRA New Orleans District Office**

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- **Joelle Morris, Examination Manager, Sales Practice, FINRA Dallas District Office**
- **Stephen Youhn, Chief Compliance Officer, ProEquities**

Recordkeeping Responsibilities

- **SEC Rules 17a-3 and 17a-4 and FINRA Rule 4511 apply:**
 - Firms must preserve for a period of not less than three years records of communications related to their “business as such.”
- **Defining “business as such”**
 - “Business as such” is facts and circumstances analysis based on the content of the communication.
 - It does not depend upon the type of device or technology (including a third-party’s platform or system) or whether it’s a personal device.
- **Firms must retain business communications on social media, messaging services, mobile devices, etc.**
- **General guidelines and practices:**
 - Retained
 - Retrievable
 - Supervised

Business vs. Personal Use

- **FINRA's guidance does not apply to personal use of social media.**
- **Firms must educate their representatives to distinguish between business and non-business (personal) communications.**
- **Autobiographical information may not cause a personal communication to become a business communication. For example:**
 - **Emailing a resume to a prospective employer.**
 - **Identifying one's employer on a social media profile page that is not used to promote the broker-dealer's business.**

Supervision: Static vs. Interactive

- **Static content is typically posted for the longer term and lacks the immediacy of a real time conversation.**
 - May include background or profile data.
- **Interactive communications are typically real-time and involve a dialog with third parties.**
 - May include status updates, or comments on another's post.
 - Merely updating a non-interactive website or blog does not cause it to become an interactive electronic forum, even if updates are frequent.
- **Blog example:**
 - Initial blog posting – static retail communication requiring prior-use principal approval.
 - Comments on blog posting – interactive and could be supervised flexibly by the firm.

Messaging

- **Firms must retain records of messages pertaining to their business as such in accordance with SEA Rules 17a-3 and 17a-4 and FINRA Rule 4511.**
- **Different approaches may be needed**
 - Instant messages
 - Text messages
 - Messaging apps



Personal Communications

- **In a personal communication an associated person may share or link to content that the firm makes available that does not concern the firm's products or services without subjecting the communication to FINRA Rule 2210.**
 - **Content Examples: information about the firm's sponsorship of a charitable event, a human interest article, an employment opportunity, or employer information covered by state or federal fair employment laws.**

Hyperlinks and Sharing

- **By linking to or sharing specific content posted by an independent 3rd-party, a firm has adopted the specific content and must ensure it complies with the communications rules.**
- **Linked content may contain its own links (“secondary links”). A firm is not responsible for the content available through such secondary links provided:**
 - **The firm has no influence or control over the content accessed through the secondary links; and**
 - **The original linked content was not merely a vehicle for secondary links or did not rely completely on the information available at the secondary links.**

Native Advertising

- **Native Advertising has been defined as advertising content that matches the form and function of the platform on which it appears.**
 - **Firms may use native advertising that is fair, balanced, not misleading and complies with applicable communications rules.**
 - **Influencer advertising may require more scrutiny and disclosure in order to comply.**

Testimonials and Endorsements

- **Unsolicited 3rd-party comments on a firm’s social media account generally are not deemed the firm’s communication; however, liking or sharing favorable comments will be deemed adoption of the comments by the firm.**
- **FINRA Rule 2210(d)(6)(B) requires that retail communications or correspondence that include testimonials about the investment advice or investment performance of a firm or its products must prominently disclose that the testimonial:**
 - **May not be representative of the experience of other customers;**
 - **Is no guarantee of future performance or success; and**
 - **Is a paid testimonial if more than \$100 in value was paid for it.**
 - **Firms may include a clearly labelled hyperlink to these disclosures, e.g., “Important testimonial information.”**

BrokerCheck Interpretation

- Per *Regulatory Notice 17-18*, the BrokerCheck link is not required for social media and apps.
- However, if an app accesses a webpage subject to the rule, the firm must ensure the BrokerCheck link remains readily apparent when displayed on a mobile device.

Customer Information Protection

- **Protection of financial and personal customer information is a key responsibility and obligation of FINRA member firms.**

Reference Material and Resources

- ***[Regulatory Notice 10-06](#), Guidance on Blogs and Social Networking Web Sites (January 2010).***
- ***[Regulatory Notice 11-39](#), Social Media Websites and the Use of Personal Devices for Business Communications (August 2011).***
- ***[Regulatory Notice 12-29](#), SEC Approves New Rules Governing Communications With the Public (June 2012).***
- **FINRA Rule 2210 Questions and Answers available at www.finra.org/industry/finra-rule-2210-questions-and-answers.**
- ***[Regulatory Notice 17-18](#): Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications (April 2017)***



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Resources

FINRA Resource

- FINRA Rule 2210 Interpretive Guidance Questions and Answers

www.finra.org/industry/finra-rule-2210-questions-and-answers

FINRA Notices

- *Regulatory Notice 17-18, Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications* (April 2017)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-18.pdf

- *Regulatory Notice 12-29, SEC Approves New Rules Governing Communications With the Public* (June 2012)

www.finra.org/sites/default/files/NoticeDocument/p127014.pdf

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

www.finra.org/sites/default/files/NoticeDocument/p124186.pdf

- *Regulatory Notice 10-06, Guidance on Blogs and Social Networking Web Sites* (January 2010)

www.finra.org/sites/default/files/NoticeDocument/p120779.pdf