



CORE COMPLIANCE & LEGAL SERVICES, INC.  
SOLUTIONS FOR TODAY'S BUSINESS

## Risk Management Update December 2009

### FINRA'S PROPOSED AMENDMENTS TO RULE 2210-COMMUNICATIONS WITH THE PUBLIC.

FINRA's proposed amendments to Rule 2210 (Communications with the Public) may finally simplify the complex advertising rules that Broker-Dealer professionals have struggled to understand for decades.

The proposed amendments to the advertising rules attempt to clarify the categories of communication and require greater disclosure for certain financial products. Importantly, the basis of an advertising review would move away from categorical classifications to an approach whereby the type of recipient / audience would determine what filing and recordkeeping requirements firms must establish.

#### Replacement of Categories of Communication

The Proposal would replace the current six categories of communications (advertisement, sales literature, correspondence, institutional sales material, independently prepared reprint and public appearance) with three broad categories:

1. **Retail communications:** This would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors. The Proposal appears to include all research reports that may be disseminated to retail investors as retail communications.
2. **Correspondence:** This would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors, regardless of whether they are existing or prospective customers.
3. **Institutional communication:** This would include communications that fall under the current definition of "institutional sales material;" (*i.e.*, communications that are distributed or made available only to institutional investors, as defined under NASD Rule 2211(a)(3)).

The old definitions for terms such as "advertisement," "sales literature," "institutional sales material," "public appearance," "independently prepared reprint" and those found within Rule 2211 would cease to be in existence.

The new rule requires that such communications be approved by "an appropriately qualified registered principal" whose license covers the subject of the communication. In addition, under the old rule, new firms had to file their *advertisements* 10 days prior to first use for the first 12 months of that initial filing. Under the new rule, all *retail communications* must be filed. This creates the possibility that a firm could hold off on retail communications until the end of their first year, or could choose not to advertise at all. Importantly, firms will need to evaluate and classify their communications accordingly.

The Release also provides guidance on post-use filing requirements, closed-end fund filing requirements, research, and communications concerning securities futures.

Additionally, Written Supervisory Procedures will need to address scripts, slides, handouts or other written and electronic materials used in connection with public appearances which will be considered retail communications under the new rule. The same standard that applies to research analysts now applies to anyone speaking on behalf of the firm. It is hoped that these proposed changes will provide simpler methods to compliance professionals who have tried, for so many years, to interpret Rule 2210.

For ease of comparing the “old” with the “new” rules, consider developing a table, such as this, and distributing this to your sales and marketing professionals. For more information, please contact Core Compliance & Legal Services, Inc. Happy New Year!

Area	Old FINRA Rule 2210 and 2211 (including IM)	Newly Proposed Rules 2210, 2212-2216
Research Reports	A Series 16 supervisory analyst can continue to review/approve research reports on debt/equity securities per Rule 2210(b)(1)(a)	The approval requirement does not apply to any retail communication that is solely administrative in nature
	Not subject to advertising filing requirements	If intended for retail customers then it is subject to filing requirements for advertising materials
Public Appearances	No requirement for “fair and balanced” presentation if mentioning a security	Subject to “fair and balanced” standards if the public appearance includes a recommendation of a security in accordance with Rule 2210 (d)(1)(7)
	Could have a WSP for this, as applicable to BD business model; no guidance provided on what to include ( <i>i.e.</i> , scripts, slides, etc.)	Required to establish WSPs to supervise public appearances and includes scripts, slides, handouts and electronic materials used in connection with the public appearance
Approval Requirements	Requires pre-approval of correspondence by a registered principal and distributed to 25 or more involving any financial recommendation or promotion of a product or service	Requires an <i>appropriately qualified</i> registered principal (“RP”) of the firm to approve <u>each</u> retail communication before the earlier of its use or filing with FINRA
Procedures	Requires the establishment of written procedures for the review of institutional sales material by a RP, and requires that “procedures should be in writing and be designed to reasonably supervise each registered representative”	Requires the establishment of written supervisory procedures for the review of institutional sales material an “appropriately qualified” RP, and replaces current language with “such procedures must be reasonably designed to ensure institutional communications comply with applicable standards”
Filing Requirements	Firms must file only <u>advertisements or sales literature</u> concerning certain	Firms must file <u>ALL retail communications</u> concerning generally

	types of issuers and products ( <i>i.e.</i> , mutual funds and collateralized mortgage obligations) prior to their first use.	the same types of issuers and products at least 10 business days prior to their first use
Pre-Use Filing Requirements	Requires firms which have not previously filed advertisements with FINRA to file their <u>advertisements</u> prior to their first use for a one-year period following the first such filings	All firms within their first year of registration with FINRA would be required to file all <u>retail communications</u> 10 business days prior to use

For more information, or to learn about how CCLS may be of assistance, please do not hesitate to contact us at (619) 278-0020.

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