COMPLIANCE BULLETIN

Electronic Communications

2017

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Electronic Communications

Many reps have questions about how and why their email and other electronic communications will be monitored.

Per FINRA Rule 2210, we are obligated to monitor your communications, and periodically we do an audit to make sure we are up to date on which emails you are using. In addition, we need to ensure that the communications themselves are appropriate and meet FINRA standards.

FINRA Rule 2210 defines "correspondence" as "any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period." If a written (including electronic) communication is distributed or made available to more than 25 retail investors within a 30 calendar-day period, it is considered a "retail communication" under FINRA Rule 2210(a)(5).

E-mail (incoming & outgoing) is considered correspondence and must be reviewed. Please note that any email account used for securities business must be captured. Please make sure that we are aware of all of the accounts you are using for securities business, and that all of your email pertaining to securities is being captured by our archiving system.

In addition to e-mail, GCS is responsible for reviewing non-email correspondence. This includes instant messaging, texting (via computer and mobile devices), social networking sites, and blogs (as stated in SEC rule 17a-3 and 17a-4 as well as NASD Rule 3110). Regulations prohibit any associated person from engaging in business communications on external websites that have not been disclosed to GCS.

The second reason that we need to monitor electronic communication is to ensure that the correspondence is appropriate and meets FINRA standards. When reviewing communications, we consider the following content standards outlined in FINRA Rule 2210:

- All communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. You may not omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.

- You should not make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. You may not publish, circulate or distribute any communication that you know or have reason to believe contains any untrue statement of a material fact or is otherwise false or misleading.
- 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.
- You must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be clear about the risks inherent to investments.
- You should consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.
- Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph does not prohibit:
    - A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;
    - An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and
    - A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis,

the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Bottom Line

GCS monitors electronic communication to comply with FINRA Rule 2210 and to ensure that all business-related electronic communication is appropriate and meets FINRA standards. While most reps are not having any issues with maintaining compliance on their communications, we did discover some issues in our recent probe. For your sake and ours, it is important that full compliance is maintained.

SOURCE MATERIAL

FINRA Rule 2210

FINRA Rule 2214

FINRA Rule 3110

SEC Rule 17a (3) and (4)