**THOMPSON
HINE**

January 2010

**INVESTMENT MANAGEMENT
UPDATE****FINRA Releases Guidance on Blogs and Social Networking Web Sites****OVERVIEW**

On January 25, the Financial Regulatory Authority (FINRA) released further guidance for firms regarding the use of blogs and social networking web sites by firm personnel for business purposes. The full guidance, in the form of questions and answers, is available at www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120779.pdf. The guidance emphasizes that firms should ensure that their policies and procedures will result in effective supervision of personnel using blogs and social networking web sites for business purposes; that personnel must have the appropriate background and training to utilize social media; and above all, that firms must ensure that the use of such media by firm personnel will not “present undue risk to investors.”

RECORDKEEPING REQUIREMENTS

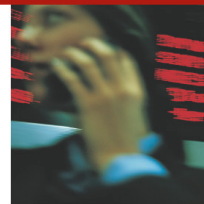
Firms permitting personnel to conduct business using blogs and other social media must retain records of that use as required by Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and NASD Rule 3110. FINRA leaves it to each firm’s discretion to determine the most appropriate means and/or technology for maintaining those records.

SUITABILITY

Recommendations made through a social media site are subject to Rule 2310 and firms are required to adopt policies and procedures reasonably designed to ensure that any recommendation of a specific investment product made through blogs or social networking web sites is suitable for each investor able to access the communication. Consequently, “[a]s a best practice, firms should consider prohibiting all interactive electronic communications that recommend a specific investment product and any link to such a recommendation unless a registered principal has previously approved the content.” Firms also may consider maintaining a list of approved communications and templates and prohibiting any communication recommending a specific product not adhering to a template or not otherwise approved by a registered principal.

BLOGS AND SOCIAL NETWORKING SITES

Rule 2210 does not require registered principal pre-approval of extemporaneous remarks by personnel in public appearances, which includes unscripted participation in interactive electronic forums. Whether posting communications on a blog constitutes a “public appearance” in an “interactive electronic forum” for purposes of Rule 2210 will depend on the “manner and purposes



for which the blog has been constructed.” Blogs used for static postings or other content are considered “advertisements” and require content to be approved by a registered principal. Blogs designed for real-time communication would be considered an “interactive electronic forum” for purposes of the rule. While a registered principal need not approve postings on such interactive blogs in advance, the firm must supervise the personnel making the posting. The same analysis applies to the static and interactive portions of social networking sites like Facebook, Twitter and LinkedIn.

SUPERVISION OF SOCIAL NETWORKING WEB SITES

Firms must supervise interactive electronic communications by firm personnel on blogs and social networking sites under Rule 3010 to ensure that the communications do not violate the content requirements of FINRA’s rules. Firms may consider risk-based policies for supervising electronic communications. Firms must adopt policies and procedure to limit the use of such sites for business purposes to personnel trained to use them, who can be properly supervised and who do not present undue risks to investors. Firms also must prohibit personnel from conducting business on any social networking web sites where communications cannot be supervised. FINRA does not restrict the use of social networking web sites by firm personnel for personal purposes.

Past FINRA notices continue to require that supervisors review certain electronic communications such as those between research and non-research departments concerning research reports to ensure that the firm’s legal and compliance department is copied on the communication; customer complaints to ensure the firm acknowledges the complaint within 15 business days; and those that ensure prior approval of account designation changes and order errors.

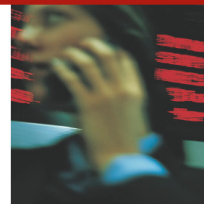
THIRD-PARTY COMMUNICATIONS

Postings of content on a firm’s blog or social media web sites by a customer or other third party generally are not considered to be communications by the firm and the approval, content and filing requirements of Rule 2210 do not apply. However, if the firm or its personnel are involved in preparing the third party’s communication, explicitly or implicitly endorse or approve the content, or pay for the content, the firm may be considered as having “adopted” the third party’s content as the firm’s content. The use of disclaimers regarding third-party content may help avoid construing the content as the firm’s, but will not be dispositive.

FOR MORE INFORMATION

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