



FINRA Issues Sweep Letter Regarding Use of Social Media

FINRA, having enacted new communications rules that specifically reference electronic communications, having issued two Regulatory Notices (linked [here](#) and [here](#)) providing guidance to the securities industry on social media, and having made social media and electronic communications exam priorities in two of the last three years, is now taking the next logical step: conducting a sweep of broker-dealers to determine their compliance with the communications rules. In posting a [Targeted Examination Letter](#)—otherwise known as a sweep letter—on its website, FINRA invoked Rule 2210(c)(6), which provides for periodic spot checking by FINRA of firms' written (including electronic) communications.

FINRA's sweep letter seeks, among other things:

- An explanation of how the firm is using social media at the corporate level in the conduct of its business;
- An explanation of how the firm's brokers generally use social media in conducting the firm's business;
- The firm's written supervisory procedures concerning production, approval and distribution of social media communications; and
- An explanation of how the firm monitors compliance with the firm's social media policies.

If past experience is any guide, FINRA likely will review the information with an eye to both establishing a baseline of current industry adherence to the communications rules and guidance, and to developing individual informal or formal disciplinary responses to firms whose procedures are seriously deficient. The sweep letter includes a request for information about the firm's top 20 producing brokers who used social media to interact with retail investors. FINRA probably believes that, in view of these brokers' levels of activity, examiners are more likely to find that some of these brokers failed in some way to comply with FINRA rules—such as FINRA content standards, or approval, review, recordkeeping and filing requirements—with respect to their use of social media to communicate with customers. FINRA might well seek to develop formal disciplinary actions against some of these brokers.

As the firms that received this request gather responsive information, they should take a comprehensive look at their procedures for approval and review of communications using social media, and should determine whether these procedures are adequately documented, and whether their registered representatives, associated persons and compliance officers are adequately trained to apply these procedures. MoFo's recent [Guide to Social Media and the Securities Laws](#), and recent [related presentation](#), are convenient places to start.

Contacts

Jay G. Baris
New York
(212) 468-8053
jbaris@mofo.com

Hillel T. Cohn
Los Angeles
(213) 892-5251
hcohn@mofo.com

Anna T. Pinedo
New York
(212) 468-8179
apinedo@mofo.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life sciences companies. We've been included on *The American Lawyer's* A-List for nine straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com. © 2013 Morrison & Foerster LLP. All rights reserved.

For more updates, follow Thinkingcapmarkets, our Twitter feed: www.twitter.com/Thinkingcapmks.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.