


Social networking policy could hold you liable for violations

If you or anyone in your firm uses a social networking site or blog, you must retain and be able to retrieve communications that are related to your business, **FINRA** says in its new guidance on the use of blogs and social networking sites. And that might be a challenge.

The guidance  spells out which portions of these forums will have to fit FINRA's pre-clearance advertising rules and which components won't. The self-regulatory organization ties the new guidance to FINRA rules on supervision, advertising, and books and records, so failure to follow the provisions could result in you getting cited by an examiner, industry pros warn.

"I think firms will be held accountable based on the fact that [FINRA is] essentially telling you their opinion on what the regulations say," says **Buddy Doyle**, founding principal and managing director of **Oyster Consulting LLC**, based in Glenn Allen, Va.

The guidance "basically codifies what everyone's been thinking," says **Amy Lynch**, president of **FrontLine Compliance, LLC**, a regulatory compliance consulting firm based in Leesburg, Va. and New York.

Retaining and retrieving communications might be tough to do, industry pros say, although FINRA says some companies are developing systems that can do this.

"There are some software companies and technology companies that have done some things around capturing Twitter, for example, but the technology is still a big challenge for folks," Doyle says.

For networking sites and blogs, the guidance differentiates between the "static" component versus the interactive component. If your firm or one of your reps sponsors a business-related blog, the portion that doesn't change - the static component - must comply with Rule 2210 advertising restrictions, which means the posting on that component must be pre-approved by a principal at the firm.

But material placed on the "real time" interactive component of the blog doesn't have to satisfy that advertising rule, FINRA says. If your firm lets reps have business-related blogs, you should make sure you train them on how the rules differ for static content versus interactive content, Doyle emphasizes.

If a rep has a blog, sign up for the message that alerts you for when the blog is updated so you can monitor any changes that are placed on the static portion of the blog, Doyle says.

Suitability

FINRA says its suitability requirements will apply to recommendations made on social networking sites. You won't want to recommend specific products on a site that everybody can see. The sponsor of the site can set limits on who sees the communications, but Doyle says most firms probably will want to prohibit recommending specific securities on interactive sites.

FINRA says, "as a best practice" you should consider prohibiting any recommendations of specific products in interactive communications, and any hyperlink to the recommendation, unless a registered principal signs off on it.

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You're supposed to supervise communications on social media sites. This, too, can be a huge challenge. You will be able to monitor the static information on reps' sites, but the interactive parts will be tougher. FINRA says you can use methods such as sampling and lexicon-based methodology.

FINRA is discouraging firms from allowing social networking sites to be used by reps with a history of being a compliance risk, especially if that history includes sales practice violations. Doyle says that's a good idea. "Any good supervisory, compliance person ought to be worried about people who pose compliance risks," he said.

Lynch says many firms will deal with the new guidance by prohibiting any business from being conducted on social networking sites.

Require an attestation from reps that they are complying with your firm's policy, Lynch advises.

"Even a prohibition is not going to be enough because you can ban your reps from doing it but how do you then prove that they're not [doing it]?" he says. Doyle said the same thing. "Firms just can't control that kind of activity," Doyle says. ■

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