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Web sites, electronic communications, seminars rank high as advertising compliance concerns

From the editors of BD Week

Web advertising, particularly a registered rep's own Web site and blog, continues to be a major issue for compliance officers and regulators.

"We're hearing a lot about blogs these days," says **Amy Lynch**, president of **FrontLine Compliance**. "Firms need to be particularly concerned about top producers who may have developed a following and who are writing blogs outside the firm. As a best practice, firms need to know about these outside communications," Lynch advises. "A number of firms are getting into trouble in this area."

In fact, **NASD** has been warning for nearly a year that blogs may pose a compliance risk if not properly supervised ([BD Week, Nov. 28, 2005](#)). Its suggestion: Blogs are advertising and a firm needs to apply the same principal review as it would for any other ad, and maintain records of that oversight for three years.

Of particular concern now is the practice of registered reps using their own Web site, or conducting business through the use of a referral service. "If the firm permits reps to have their own Web site, it must review and supervise the content," Lynch says. "The normal rules of supervision would apply."

Charts and graphs are also an issue. "They have to be accurate, of course, but they also require the proper disclosures," Lynch says. She tells clients to watch for the location and size of the disclosure - it has to be on the same Web page as the chart or graph, and it has to be in a type size that's large enough to be legible, typically no smaller than eight-point type.

Lynch also suggests that firms review all of the hyperlinks that are on their Web sites, and the Web sites of their producers. "When the link goes outside the firm's Web site, the firm is also responsible for that content," she notes.

Last year, NASD staff members said they feared that linking legitimate Web sites to questionable penny stocks could catch on and cause compliance problems.

Electronic communications have had a lasting impact on the regulatory landscape since they dominated the **NASD** Fall Compliance Conference last year. But other advertising issues - sales seminars for senior investors, new product reviews and foreign language communications - are also attracting attention.

Sales, seminars, reviews

Among other current advertising concerns:

- **Sales to seniors.** State regulators continue to speak out about sales to senior investors. Speaking at a **Financial Services Institute** public policy meeting last week, Delaware securities commissioner **James Ropp** urged firms to act with caution during the sales process. "There likely will be scrutiny as to what was disclosed, how it was disclosed and whether or not the disclosure

was full and fair," he said, according to published accounts.

- **Seminars and public appearances.** Sales to seniors may be at the top of many regulators' lists these days, but it's really a subset of a larger problem of an approving authority not being familiar with either the rep or the intended audience. It's a classic example of a blind sign-off, but the supervisor has an obligation to look closely at the request before signing off, **Tom Pappas**, NASD's director of Advertising Regulation, has said.
- **IAs and B-Ds.** An issue like the **SEC's** examination of the difference between investment advisers and broker-dealers can also have an impact on advertising. The training and qualifications of IAs and B-Ds related to the marketing, sale and delivery of financial products, and advertising will almost certainly be addressed, says **Duane Thompson**, managing director of the **Financial Planning Association**.
- **New Product Review.** Compliance should be involved from the first day of any new product development and review process to track the communications that are made to the public. NASD guidance in [Notice to Members 05-26](#) is as true today as the day it was written. It says successful broker-dealers have programs that share common components like:

>> a written new product proposal that assigns ownership of the product and is available at all times through an internal Web-based distribution system;

>> an assessment by compliance and legal that determines if the product is new or a material modification of an existing product, as well as the appropriate level of review;

>> a formal vote to approve, disapprove or table the new product launch; and

>> post-approval follow-up and review, particularly for products that are complex or approved only for limited review.

- **Foreign language communications.** The issue is "getting ready to explode," Pappas and **Larry Stadulis**, a partner with **Stradley Ronon**, conclude. "The new regulatory standard requires delivery in a language the customer can understand," they said. "So what's the comfort level among CCOs that they can deliver?"

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