Broker-Dealer Communication with the Public

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Introduction

On March 29, 2012, the SEC approved FINRA's new proposed rules regarding broker-dealers' communications with the public, which will become effective no later than a year from the date of approval.[1] According to FINRA, the new rules will simplify the current regulatory framework, codify certain interpretations, and clarify their practical application.[2] The stated overall purpose of these new rules is to ensure member firms' communications with the public are "fair and balanced."[3] However, FINRA may have missed an opportunity to create a new paradigm that would have better addressed electronic communication, despite the increase in communication made on personal mobile devices and through social media websites.[4]

The current definitions of broker-dealer communications are generally based on the nature of the material being communicated (i.e., advertisements, sales literature, correspondence, institutional sales material, and independently prepared reprints).[5] However, the new rules define broker-dealer communication not according to the nature of the material being communicated, but according to the nature of the audience to whom the material is being communicated. Correspondence is defined as communication to a small group of retail customers, retail communication is defined as communication to a broad group of retail customers, and institutional communication is defined as communication to any number of institutional customers.

The new rules essentially impose the current filing and approval requirements upon these new categories of communication, and this changes the filing and approval requirements for some, but not most, communications. The requirements governing the content, supervision, recordkeeping and suitability (if a recommendation is made) under the new categories of communications generally do not change but are in some instances enhanced. It is important for broker-dealers to understand not only their duties under the current rules, but also how those obligations will change and how they will remain the same, once the new rules become effective.

What are the forms of broker-dealer communications with the public?

Different filing and approval requirements apply to different types of communication. The current rules define broker-dealer communication differently from the new rules and, to a certain extent, the filing and approval requirements for some communication will change once the new rules, and the new definitions of broker-dealer communication, come into effect. However, the current rules regarding the content, supervision, record-keeping and suitability (if a recommendation is made) largely remain the same regardless of the new categories of communication.

A. The current NASD rule 2210 defines six types of communication.

The current NASD Rule 2210 defines six types of broker-dealer communication: advertising, sales literature, correspondence, institutional sales material, independently prepared reprints, and public appearances.[6] In the context of electronic communication, FINRA distinguishes between static communication that does not change over time (like a posting on a website), and interactive communication, including traditional public appearances (like radio and television interviews), and more modern electronic appearances (like participation in blogs and social networking sites). FINRA recognizes that some forums, like blogs and social networking sites, may contain both static and interactive communication, and firms must treat those forms of communication differently for purposes of approval and filing requirements.[7]

In addition, third party posts on websites are generally not considered to be firm communication, unless the firm has either been involved in preparing the content (under a theory of entanglement) or has explicitly or implicitly endorsed or approved (under a theory of adoption) the content of the post.[8] To avoid entanglement or adoption, a member firm should disclose the firm's policies regarding responsibility, establish appropriate guidelines and a screening process for third party content.[9]

B. The new FINRA Rule 2210 has only three categories of communication.

The new FINRA Rule 2210 reclassifies all broker-dealer communications into three new categories: correspondence, retail communication, and institutional communication. The new rule focuses specifically on the nature of the audience to whom the communication is directed, instead of concentrating, as the old rules had, on the type of material being communicated. The new FINRA rule distinguishes between written communication to retail investors (retail communication or correspondence, depending on the number of retail investors) and communication to institutional investors (institutional communication, regardless of the number of institutional investors). The new FINRA rule includes electronic communication as part of written communication, and separately addresses public appearances.

1. Correspondence will be defined as communication to 25 or fewer retail investors.

Under the new FINRA rule, correspondence is defined as any written, including electronic, communication distributed or made available to 25 or fewer retail investors within 30 days.[10] Unlike the current NASD rule defining correspondence, the new FINRA rule uses the term "investor" instead of "customer" and does not distinguish between existing and prospective customers.

2. Retail communication will be defined as communication to more than 25 retail investors.

Under the new FINRA rule, retail communication is defined as any written, including electronic, communication distributed or made available to more than 25 retail investors within 30 days.[11] Retail investors are any investors not found to be institutional investors, regardless of whether they have an account with a member firm.[12] Retail communication under this new rule would include any written communication to more than 25 retail customers, regardless of whether the communication would have been considered advertising or sales literature under the current NASD rule.

3. Institutional communication will be defined as communication to institutional investors.

Under the new FINRA rule, institutional communication is defined as any written, including electronic, communication distributed or made available only to institutional investors, but specifically excludes internal communications within the firm.[13] The definition of an institutional investor under the new FINRA rule, which is very similar to the definition under the current NASD rule, includes investors having at least $50 million in total assets, a governmental entity or subdivision, certain employee benefit or qualified plans with more than 100 participants, a member or registered person of a member, or a person acting solely on behalf of an institutional investor.[14] However, if the member has reason to believe that communication with an institutional investor will be forwarded or made available to a retail investor, then the member firm cannot treat that communication as solely institutional communication.[15]

What are the approval and filing requirements for member firms in communicating with the public?

Whether a member firm must have its associated persons approve a particular communication before it is made, and whether the firm must also file the communication with FINRA's Advertising Regulation Department, all depend on how that communication is defined under the rules.

A. Pre-approval by Qualified Principal or Supervisory Analyst.

1. The current NASD rule requires advertising, sales literature, and independently prepared reprints to be approved before use.

Communication currently defined as advertising, sales literature and independently prepared reprints must be approved in writing before its first use or first filing with FINRA's Advertising Regulation Department, unless the material has already been approved and will not be materially changed.[16] The approval must be documented by the signature and date of a registered principal of the member firm and copies must be kept for three years, readily accessible for two.[17] Certain research reports regarding debt and equity securities may be pre-approved by supervisory analysts instead of qualified principals.[18]

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If the advertising or sales literature is intended to be communicated electronically, it must be pre-approved in the form that it will be launched.[19] This type of communication would include content on a website, search engine banner advertisement, bulletin board, static content (like a profile) on a social networking site or blog posting, and e-mails and instant messages to more than 25 people within a 30-day period.

2. The new FINRA rule requires certain retail communication to be approved before use.

Under the new FINRA rule, retail communication (like advertising, sales literature and independently prepared reprints under the current NASD rule) must be approved by a qualified principal before first use or first filing with FINRA's Advertising Regulation Department, unless it has already been approved and will not be materially changed.[20] In addition, supervisory analysts with technical expertise, instead of qualified principals, may pre-approve certain research material if the analyst has technical expertise in the area.[21] However, pre-approval is not required for retail communication that: (1) is excluded from the definition of research report unless a recommendation is made, (2) is posted on an online interactive electronic forum, or (3) does not make a financial or investment recommendation or promote a product or service of a member.[22]

Similarly, as under the current NASD rule, the new FINRA rule does not require broker-dealers to pre-approve any correspondence (communication to 25 or fewer retail customers), although correspondence is subject to supervision and review requirements.[23] Institutional communication may or may not require pre-approval depending on the firm's procedures. If pre-approval is not required by a firm's procedures, though, the firm must educate and train its employees so that they understand the rules governing institutional communication, document such training and follow up to ensure compliance with these rules.[24]

B. Pre- and post-use filing with FINRA's Advertising Regulation Department.

1. The current NASD rule contains both pre- and post-use filing requirements.

Under the current NASD rule, certain advertising and sales literature, in addition to being pre-approved, must also be filed with FINRA ten days before their first use.[25] In addition, sales literature containing bond fund volatility ratings must be filed with FINRA ten days before their first use, and must not be published or circulated until all changes required have been made.[26] Other communications required to be filed ten days before their first use include: advertisements or sales literature regarding registered investment companies with certain ranking or performance comparisons, advertisements concerning collateralized mortgage obligations, and investment company advertisements and sales literature using ranking or performance comparisons not generally published or created by an investment company.[27]

Other communication, while not subject to pre-filing requirements, is subject to post-filing requirements under the current NASD rule. Specifically, certain advertisement and sales literature regarding investment companies, public direct participation programs, government securities, and templates for written reports or advertisements and sales literature regarding an investment analysis tool, must be filed within ten days of their first use.[28] In addition, final filmed versions of television or video advertisements for which a draft or story board version were filed, must be filed within ten days of their first use or broadcast.[29]

Advertisements and sales literature that are specifically excluded from pre- and post-filing requirements under the current rule include any material that was previously filed and will be used without material changes, that is solely related to recruiting or another administrative member detail, that merely identifies the symbol of a member firm or security for which a member firm is a market maker, or that merely identifies the member firm or offers a specific security at a specific price. In addition, certain prospectuses, media press releases, independently prepared research reprints, correspondence, and institutional sales material are all excluded from any pre- or post-filing requirements under the current rule.[30]

2. The new FINRA rule contains both pre- and post-filing requirements as well.

Similarly, the new FINRA rule requires new members in their first year to pre-file ten business days before their first use any retail communication published or used in an electronic or other public media, including website, newspaper, magazine, radio, television, telephone or audio recording, video display, sign billboard, movie or telephone directory.[31] In addition, all members must pre-file ten days before their first use certain retail communications regarding registered investment companies that include performance rankings or comparisons, securities futures and bond mutual funds.[32]

The new FINRA rule, like the current NASD rule, also requires other communication that does not need to be filed before its first use, to be filed within 10 day of its first use. Communication subject to a post-filing requirement includes retail communications concerning: certain registered investment companies, direct participation programs, templates for written reports produced by investment analysis tool, collateralized mortgage obligations, and derivatives.[33] In addition, if a member pre-filed a draft of a television or video retail communication, then the member must file the final filmed version within ten days of first use.[34]

The new FINRA rule specifically excludes the following types of retail communications from any pre- or post-filing requirements: previously filed communications used without material change, template-based communication with statistical or non-narrative information updated, communication without a financial or investment recommendation or promotion, communication that merely identifies a symbol, security of a market maker, a member, or a specific security at a specific price, and communication posted on an online interactive electronic forum. In addition, the following types of communication are not considered retail communication and are for that reason specifically excluded from the filing requirements of the new FINRA rule: prospectuses, private placement memoranda, press releases for media, certain reprinted articles, correspondence, institutional communications, and product listings.[35]

What about the content of broker-dealer communication?

A. The current NASD rule requires fair dealing and good faith in all communication.

All communication that a broker-dealer has with the public must be based on the concept of fair dealing and good faith. The content of the communication must be fair and balanced and there must be a sound basis for evaluating the facts about a particular security or type of security, industry, or service. The content must not contain any material omissions, false, exaggerated, unwarranted or misleading statements, a known untrue or false statement, a prediction or projection of investment results, or unwarranted or exaggerated claims, opinions, or forecasts. Any information that would enhance an investor's understanding cannot be relegated to a footnote; instead, this information should be in the body of the text. Testimonials, comparisons, and information regarding members' names and products or services offered in advertisements and sales literature must only be from someone with the knowledge and experience to have such an opinion.[36]

There are eight Interpretative Memoranda specifically addressing how member firms can avoid misleading statements in their communications with the public by considering the context, audience, and clarity of their statements. These Interpretative Memos offer advice about communications involving tax-free statements, variable life insurance and annuities, rankings in investment company material, the use of FINRA's name, bond mutual fund volatility ratings, securities futures, and collateralized mortgage obligations.[37]

B. The new FINRA Rule adds some additional content requirements.

The new FINRA rule is very similar to the current NASD rule, but explicitly adds that members must ensure that their statements are "clear and not misleading and provide a balanced treatment of risks and potential benefits" and the statements must be "consistent with risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments."[38] In addition, the new FINRA rule requires that members "consider the nature of the audience" and provide "details and explanations appropriate to the audience."[39] Testimonials under the new rule require more disclosure than under the current rule, including the fact that the testimonial is being paid for (unless less than $100 was paid for it).[40]

How do member firms ensure suitability requirements have been met in their communications?

A. New FINRA Rules 2090 & 2111 impose suitability requirements on broker-dealer communications.

New FINRA Rule 2090 replaces NYSE Rule 405(1) and new FINRA Rule 2111 replaces NASD Rule 2310, and are effective as of July 9, 2012.[41] Rule 2090 (the "know your customer" rule) requires the broker-dealer, at the start of the relationship, regardless of whether a recommendation is made, to use reasonable diligence to know the essential facts to: effectively service the account, act in accordance with special handling instructions, understand the authority of persons acting on customer's behalf, and comply with all applicable laws, rules and regulations.[42] Rule 2111(the "suitability" rule) requires that, upon a recommendation (suggesting action or inaction about a security or investment strategy), the broker-dealer associated person must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable based on information obtained through reasonable diligence to ascertain the customer's investment profile, which includes age, other investments, financial situation and needs, tax status, investment objectives, experience, time horizon, liquidity needs, risk tolerance, and other information disclosed.[43]

A recent survey found that "FINRA's top enforcement issue in 2011 was the violation of advertising regulations."

Suitability requirements apply if a recommendation is made, regardless of how it is made, and would include any form of advertising, including any made electronically through a social media site. A determination that a recommendation has been made involves an analysis of the facts and circumstances, including the content, context, and presentation. A recommendation is a communication that is objectively and reasonably viewed as a suggestion to take action or refrain from taking action regarding a particular security or investment strategy, and the more tailored the communication is to a specific customer, the more likely it will be deemed to be a recommendation.[44]

B. The new FINRA Rule adds additional disclosure requirements.

The new FINRA rule on communications incorporates the content requirements discussed above and also imposes additional requirements on member firms when making recommendations in retail communications. In addition to having a reasonable basis, the member firm must disclose if it is making a market in that security, has a financial interest and the nature of that interest, or if it is a manager or co-manager of a public offering of the issuer's securities. In addition, member firms must provide investment information in support of the recommendation, and any reference to past recommendations must be in the context of all relevant information and must include a cautionary legend. Research reports and registered investment companies or variable insurance products are exempted from this requirement so long as there is a reasonable basis for the recommendation.[45]

How do member firms supervise their communications with the public?

A. NASD Rule 3010 requires firms to establish and maintain systems

Rule 3010 requires member firms to establish and maintain a system reasonably designed to achieve compliance with federal securities laws and regulations. Firms may use risk-based principles to determine the appropriate review of electronic business communications, but they should consider how to effectively flag problems, other areas requiring supervision and how to educate employees to ensure compliance with firm policies and procedures.[46] Firms should provide employees quick and easy access to electronic communications policies and procedures; a clear list of permissible mechanisms, specific language about the consequences of non-compliance, and training on a regular and as-needed basis, tailored to the employees' functions.[47] Firms may use a lexicon-based review of electronic communications, a random review of electronic communication, or some combination of the two.[48]

1. Electronic communication.

Supervision of social networking sites and blogs should be similar to that described for electronic communication. Social media site restrictions require that all communication is supervised and associated persons are properly trained. Firms should prohibit employees from any business communication on a social media site that is not supervised by the firm. Even if business communication on a social media site is permitted, the firm must monitor that site to ensure that its policies and procedures are being followed and to determine whether the communication presents too great a compliance risk, and must clearly establish penalties for violations of these policies and procedures. Supervising social media content requires firms to follow up on red flags, and may require firms to institute annual certification of associated persons or spot check websites for compliance with firm policies.[49] Recent disciplinary actions brought against firms for violations of supervision, and other communication, rules are discussed in section VIII of this article.

2. Best Practices.

As a best practice, firms should consider prohibiting all interactive electronic communication (non-static) that includes a recommendation of a specific investment product unless the communication has been pre-approved and the recommendation pre-approved by a registered principal. Firms should also consider adopting policies and procedures addressing specific investment products, even if those promotions would not constitute recommendations.[50] Firms cannot provide links to third party sites that the firm knows, or has reason to know, contain false or misleading content. Third party posts on a firm's social media site are not considered to be business communication unless the firm prepared or endorsed the content.[51] Firms must supervise data feeds on their own sites, must be familiar with the data feed vendor's ability to provide accurate information, and understand the criteria used in obtaining data to ensure that it was gathered reasonably. Firms must review data feeds for red flags indicating that the data is not accurate and take prompt corrective measures if inaccuracies are found.[52]

What are the record-keeping requirements of member firms?

A. The current NASD rule requires firms to retain records of communication.

SEC Rule 17(a)-(4)(b)(4) requires members firms to retain the original of all communications received, and copies of all communications sent along with the written approval records of sent communication, for three years, readily accessible for the first two.[53] The current NASD Rule 2210(b) requires member firms to retain all business communication posted on business-related websites, e-mail, instant messages, and postings on social media sites, sent or received on firm or personal devices. Therefore, firms cannot use social media sites or electronic communication devices that automatically delete content. The test for whether the record-keeping requirements apply to the communication is based solely on the content of the communication and its relation to the firm's "business as such," regardless of the device or technology involved in the communication.[54] Content related to a firm's "business as such" would include a posting of the firm's products or services. The record-keeping requirements are the same regardless of whether the communication is static or interactive.[55]

B. The new FINRA Rule incorporates the record-keeping requirements of the current NASD Rule.

The new FINRA rule incorporates the record-keeping requirements of the current NASD rule. Specifically, firms are required to maintain records of all retail and institutional communication, including a copy of the communication and date of first and last use, the name of the registered principal approving the communication and the date thereof, or if no such approval was required, the name of the person who prepared or distributed the communication, information on the source of any statistical table, chart or graph and the name of the person who filed the retail communication with FINRA and a copy of any response.[56]

What should a firm's compliance policy look like?

The rules regarding broker-dealer communication apply regardless of the type of device used for the communication or whether it is owned by an individual or a firm, so long as the communication is related to a firm's "business as such." FINRA recognizes that associated persons of member firms may use personal devices to communicate on social media websites, but insists that, if that communication is business-related, the federal securities laws and regulations apply.

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Member firms are often required to first approve communication, and often to also file material with

FINRA before the communication is actually made. Regardless of any approval or filing requirements, all communication with the public that is found to be firm-related must comply with the content, supervision and record-keeping rules (and also with FINRA's suitability rules if, during the course of the communication, a recommendation is made). Therefore, even an e-mail or instant message sent from an employee's personal device or home computer through the employee's personal e-mail or on a social networking site would be subject to all of the rules regarding communication with the public if it is business-related.

Therefore, member firms must clearly set forth for their employees how they define business-related communication so it is clear what communication will be subject to these rules. Second, firms must have policies and procedures in place to ensure that all such communication complies with all of the rules. Firms are free to establish their own compliance policies so long as they are reasonably designed to ensure compliance with applicable federal securities laws and regulations, including approval, content, supervision, record-keeping and suitability requirements.

Firms may have a blanket prohibition forbidding employees to post any business-related content to the firm's website, or their own personal websites, without prior authorization from the firm's compliance department. Firms should define business-related content, which could include references to or information about the firm, investment advice, investment-related issues, or links to any of these. For public appearances, including participation on extemporaneous interactive electronic forums like chat rooms, firms may also have a blanket prohibition forbidding employees to participate without prior authorization. However, such communication, even once approved, would still be subject to supervisory and suitability requirements, and without knowing the exact communication ahead of time, it is much more difficult for a firm to ensure that the real-time communication would satisfy applicable requirements. Firms may also have a blanket prohibition forbidding employees from engaging in blogs relating to the firm, its employees, customers or its business. In addition, firms may have a blanket prohibition forbidding employees from participating in any social networking site, chat room, message board, web log, blog, for any business purpose or using any firm's system. Given the difficulty in supervising employee communications on these mediums, a blanket prohibition against employees using any of these for a business purpose may very well be the best practice for firms to follow. Firms should also make their employees aware that instant messaging would be considered a form of communication which must comply with all applicable rules and regulations including record-keeping requirements and therefore is not appropriate for business communication.

Recent Disciplinary Actions Against Member Firms

A recent survey found that "FINRA's top enforcement issue in 2011 was the violation of advertising regulations." This issue went from the fifth to the first on the top 5 list of enforcement issues.[57] In the past year, FINRA has brought cases against broker-dealers for violating advertising regulations concerning pre-approval, pre-filing and the content of such material.

In August 2011, Morgan Keegan was ordered to pay $200 million in restitution to bond fund investors after FINRA found that sales materials contained exaggerated claims, failed to provide a sound basis for evaluating the facts of the investments, were not fair and balanced, and did not adequately disclose the impact of market conditions in 2007 that caused substantial losses. FINRA's Executive Vice President and Chief of Enforcement stated that, "[f]irms must ensure that their marketing materials fully and accurately describe the products they sell, including the attendant risks and any relevant information about market conditions that may impact those products. By not fully disclosing the risks, Morgan Keegan portrayed the [investment] as a safer investment than it was." FINRA found that the firm failed to adequately describe the nature, holdings and risks of the investment.[58]

In March 2011, FINRA fined UBS Financial Services $2.5 million and ordered the firm to pay restitution of $8.25 million after FINRA found, among other things that certain advertising material had the effect of misleading customers about the nature, scope and limitations of the securities sold.[59] In January 2012, FINRA fined Wells Investment Securities $300,000 for misleading marketing materials used in a REIT offering. FINRA's Executive Vice President and Chief of Enforcement stated that, "[b]y approving and distributing marketing materials with ambiguous and equivocal statements, Wells misled investors into thinking Wells Timberland was a REIT at the time when it was not a REIT. Firms need to be mindful that investors rely on marketing material to disclose truthful, accurate and up-to-date information to help inform their investment decisions."[60]

Conclusion

Failure to comply with FINRA's broker-dealer communication rules can expose firms and their personnel to serious adverse consequences. In addition, compliance with these requirements is an essential element of an effective supervisory and compliance program. Accordingly, it is imperative that firms devote sufficient attention and resources to compliance with these requirements.

ENDNOTES

1 Securities and Exchange Commission Release No. 34-66681; File No. SR-FINRA-2011-035 (March 29, 2011) at p.68.
2 Id. at 69 ("[T]he proposed rule change is primarily intended to simplify FINRA's advertising rules . . ., codifying long-standing interpretations of the rules, and clarifying certain provisions.")
3 Id. at 67. ("[T]he proposed rule change seeks to balance the need for members to communicate with their customers and the need for such communications to be fair and balanced.".)
4 Id. at 66 (Commentators recommended that FINRA take a "longer-term, comprehensive approach to the regulation of social media" and "provide guidance or new rules tailored to these technologies" but FINRA determined that these concerns were "outside the scope of the proposed rule changes.")
5 Public appearances are the one exception to this.
6 NASD Rule 2201(a)
7 Notice to Members 10-06 Social Media Web Sites January 2010, p.5
8 Id. p.6.
9 Id. p.7-8.
10 FINRA Rule 2210(a)(2)
11 FINRA Rule 2210(a)(5)
12 FINRA Rule 2210(a)(6)
13 FINRA Rule 2210(a)(3)
14 FINRA Rule 2210(a)(4)
15 NASD Rule 2210(a)(4)
16 NASD Rule 2210(b)
17 NASD Rule 2210(c)
18 NASD Rule 2210(b)(1)(B)
19 Notice to Members 11-39 Social Media Websites and the Use of Personal Devices for Business Communications August 2011, p.2.
20 FINRA Rule 2210(b)(1)(A) & (C)
21 FINRA Rule 2210(b)(1)(B)
22 FINRA Rule 2210(b)(1)(D)
23 FINRA Rule 2210(b)(2)
24 FINRA Rule 2210(b)(3)
25 NASD Rule 2210(c)
26 NASD Rule 2210(c)(2)
27 NASD Rule 2210(c)(4)
28 NASD Rule 2210(c)(2)
29 NASD Rule 2210(c)(6)
30 NASD Rule 2210(c)(8)
31 FINRA Rule 2210(c)(1)(A)
32 FINRA Rule 2210(c)(2)
33 FINRA Rule 2210(c)(3)
34 FINRA Rule 2210(c)(4)
35 FINRA Rule 2210(c)(7)
36 NASD Rule 2210(d)
37 Interpretive Memos IM-2210 1 through 8.
38 FINRA Rule 2210(d)(1)(D)
39 FINRA Rule 2210(d)(1)(E)
40 FINRA Rule 2210
41 See "Doing Business Under FINRA's New Suitability and KYC Rules," Matthew C. Boba, Practical Compliance and Risk Management for the Securities Industry, March-April 2012.
42 FINRA Rule 2090
43 FINRA Rule 2111
44 Regulatory Notice 11-02 – SEC Approves Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations; Effective Date: October 7, 2011; Regulatory Notice 11-25 – New Implementation Date for and Additional Guidance on the Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations; Implementation Date: July 9, 2012.
45 FINRA Rule 2210(d)(7)
46 Regulatory Notice 07-59 – Supervision of Electronic Communications – FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications December 2007, p.6.
47 Id. pp.7-8.
48 Id.p.13.
49 Notice to Members 10-06, supra, at p. 7 and Notice to Members 11-39, supra, at p.5.
50 Notice to Members 10-06, supra, at p.4
51 Notice to Members 11-39, supra, p.3
52 Id.
53 Notice to Members 11-39, supra, at p.2
54 Id.
55 Id. at 3.
56 FINRA Rule 2210(4)
57 Law 360 Sutherland Asbill survey
58 FINRA website, Industry, Enforcement, Disciplinary Actions, Monthly Actions for September 2011. http://finra.org/Industry/Enforcement/DisciplinaryActions/MonthlyActions/September2011
59 FINRA website, Industry, Enforcement, Disciplinary Actions, Monthly Actions for March 2011. http://finra.org/Industry/Enforcement/DisciplinaryActions/MonthlyActions/March2011
60 FINRA website, Industry, Enforcement, Disciplinary Actions, Monthly Actions for January 2012. http://finra.org/Industry/Enforcement/DisciplinaryActions/MonthlyActions/January2012