

MONTHLY LUNCHEON SUMMARY

July 26, 2011**Joseph E. Price, Senior Vice President of Corporate Financing and Advertising Regulation at FINRA, Discusses the Use of Social Media Sites By Broker-Dealers and Their Registered Representatives at the SIFMA July Monthly Luncheon**

On July 26, 2011, Joseph E. Price, Senior Vice President of Corporate Financing and Advertising Regulation at the Financial Industry Regulatory Authority, Inc. ("FINRA"), spoke at the SIFMA Compliance and Legal Society July Monthly Luncheon ("SIFMA Luncheon"). Mr. Price discussed certain issues relating to the application of FINRA rules governing communications with the public to the use of social media sites by FINRA member firms and their registered representatives. The following provides an overview of Mr. Price's remarks.

FINRA Prepares Additional Guidance

Mr. Price began his remarks by stating that compliance issues in the context of social media usage by broker-dealers and their personnel are evolving rapidly. In this regard, Mr. Price mentioned that FINRA will soon publish additional guidance ("Additional Guidance") on the use of social media sites by broker-dealers and their registered representatives. The guidance will be published in a Q&A format and will include FINRA's responses to questions it has received since the release of Regulatory Notice 10-06 ("Notice 10-06") in January 2010, which addressed, also in a Q&A format, the application of FINRA's communications with the public rules to social media sites, such as blogs and social networking sites.

General Issues and Recent Developments

Mr. Price noted that, in general, FINRA does not encourage broker-dealers to use social media sites or to let their registered representatives engage in business communications using such sites. The use of social media sites may not even make sense for many firm's business models. However, Mr. Price said that we have reached a point where every firm has to train its employees regarding business communications and social media because many employees use Facebook, Twitter or similar sites, and therefore employees need to know the difference between a personal and a business communication, the latter of which would be subject to FINRA's communication with the public rules and the Securities and Exchange Commission's ("SEC") recordkeeping rules. All firms have to be proactive and train their personnel on the firm's policies regarding the use of social media sites and make sure that employees understand the difference between a personal and a business communication.

With respect to recordkeeping requirements, Mr. Price said that the Additional Guidance that FINRA proposes to release soon will address certain issues relating to the recordkeeping responsibilities of FINRA member firms. In this regard, Mr. Price noted that SEC and FINRA rules require that, for record retention purposes, the content of the communication determines whether the communication needs to be preserved. This may cause difficulties, said Mr. Price, as this requires a document by document analysis, but, basically, if a registered representative communicates through a social media site, the firm needs to be able to retain all those communications and be able to retrieve them. In addition, broker-dealers must ensure that before registered representatives or employees may engage in business communications through a social media site, they obtain prior approval from a registered principal so that the firm can make certain that it has the necessary recordkeeping and supervision capabilities with

regard to the site. This requirement, Mr. Price said, is based on the same concept that FINRA applies to advertisements and sales literature under the communications with the public rules, which require prior registered principal approval for advertisements and sales literature. Once an employee receives approval for a site, or, more specifically, for the static content of the site, the employee may engage in interactive communications on such site, and such interactive communications do not require the prior approval of a registered principal. As discussed in Notice 10-06, interactive communications need to be retained and supervised, but they can be supervised using lexicon- or random-based technology "post-use," Mr. Price noted.

With respect to interactive communications, Mr. Price also mentioned that FINRA recently settled a case that involved a registered representative, Ms. Jennifer Quyen Ta, who, among other things, engaged in outside business activities that had not been approved, created websites related to the firm without obtaining the firm's prior approval, and failed to notify the firm that she sometimes touted stock on a Twitter account that had not been approved by a registered principal of the firm and that she used to "tweet" unbalanced stock recommendations that failed to disclose material information. Ms. Ta's "tweeting" clearly violated FINRA's communications with the public rules, Mr. Price said.

Mr. Price subsequently addressed the issue of personal devices that are sometimes used by firm personnel to engage in business communications or to access firm applications. Mr. Price explained that compliance with the applicable rules should not depend on the type of technology involved in the communication but rather on the content of the communication, and therefore personal devices may be used for business communications.

Another topic that Mr. Price addressed were "LinkedIn" accounts. Mr. Price pointed out that firms should be aware that where a LinkedIn account lists, in addition to the usual "business card information," all the products and services that are offered by the firm, account activity probably would have to be supervised and records would need to be retained in compliance with the applicable FINRA and SEC rules.

In response to a question from the audience relating to third-party posts on a firm's site, Mr. Price said that FINRA does not consider a third-party post to be a firm communication with the public unless the firm, or its personnel, either is entangled with the preparation of the post or adopts its content. However, Mr. Price noted that there may be other reasons why a firm would want to take down certain content from its site. In this regard, the Additional Guidance will address the question of whether the selective deletion of content from a firm's site means that the firm adopted the content that it has not deleted. Mr. Price indicated that FINRA will make clear in the Additional Guidance that when a firm, selectively, deletes certain content from its site that this generally does not mean that firm adopted any content that it has not deleted.

A related issue discussed by Mr. Price involved hyperlinks. In general, simply hyperlinking to a site does not mean that the firm has adopted the material on that site, Mr. Price said. However, even if a firm has not adopted the site, a firm that hyperlinks to a site still does have responsibility to vet the content of the site and make sure that the firm does not hyperlink to a site that contains false or misleading content.

Similarly, when a broker-dealer streams data on its website that is provided by a third-party/vendor, the broker-dealer is required to vet the vendor and must ensure that if there is false information being streamed on the firm's site that the firm has a policy in place where it can quickly remediate false information. The firm would not, however, have a responsibility to monitor the data on a daily or minute by minute basis, Mr. Price noted.

Another topic that FINRA will address in the Additional Guidance relates to communications on Facebook. Mr. Price said it is not unusual for an employee or registered representative of a firm to have a Facebook account where the employee's "Friends" talk to the employee about a particular security and might even ask the employee whether he or she would recommend the security. If the site is not one that the firm has approved for business communications, then, Mr. Price said, the firm should provide the employee with a prepared response that was approved by a principal and that says, for example, that the employee cannot discuss these questions through his

or her Facebook account and that the "Friend" should email the employee at the employee's business email address or call the employee at his or her business number instead. Obviously, said Mr. Price, if the response involves interactive business communications, that would have to get prior approval and, the interactive business communications would have to be supervised and retained.

Finally, an audience member mentioned that she heard of compliance officers that require registered representatives to "befriend" them on Facebook so that they can monitor their personal pages. Mr. Price said that, generally, there are firms that adopt policies that go beyond what is set forth in applicable FINRA guidance, and firms may have reasons to adopt such policies, but FINRA does not encourage it. With respect to a policy that requires firm personnel to "befriend" the firm's compliance officer on Facebook, FINRA does not require such a policy.

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