

Foreside and FINRA Advertising Regulation

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Foreside partners with our clients to help deliver compliant marketing communications to institutional investors and the retail public. Foreside works closely with the FINRA Advertising Regulation staff to help our clients' marketing communications comply with FINRA Rules and interpretive guidance. Last year, Foreside filed over 7,000 communications with FINRA, which provided valuable feedback across many product lines. We are delighted to share this beneficial information with our clients to educate and assist with the creation of marketing communications.

Key takeaways from FINRA Comment Letters Year-to-Date

- Avoid dense blocks of text in disclosures. FINRA requires space between each disclosure, and different font styles in a dense block will not satisfy requirements.
- Define important terms to ensure your audience understands the concepts being discussed.
- Do not relegate risk and disclosure to headings like "Disclaimers" that minimize the importance of the disclosures.
- Depending on the information discussed in the communication, risk disclosures may need to be incorporated into the main text of the document.
- Performance disclosure must be included and equally prominent with the first mention of standardized or non-standardized performance.
- Prospectus language must be included in most communications when discussing a product.
- Avoid boilerplate language if not applicable to the information within the communication.
- Topics discussed in the communication trigger the certain FINRA required risk disclosures.

- New product launches and regulatory focus:
 - Defined benefit products
 - Special Purposed Acquisition Company (SPAC) products
 - Crypto Currencies
 - Environmental, Social & Governance (ESG) products
 - Closed End Private Funds

All things ESG- 2021

Environmental, Social & Governance (ESG) strategies are a focus for FINRA Advertising Regulation this year. FINRA has provided feedback to member firms through discussions with FINRA analysts and FINRA Comment Letters . It is also important to note, communications discussing Socially Responsible Investing (SRI) should work to comply with the ESG guidance.

- Firms touting ESG strategies and capabilities in fund marketing communications must ensure the information is supported by the fund's prospectus.
- Use of third-party data like ESG Scores or ESG designations must be supported by an explanation similar to those required for ratings and rankings under FINRA rules.
- Firms must provide a sound basis for statements such as "Leaders in ESG." Back- up to support the claim or additional information in the communications will be required.
- Advisors may pursue an overall ESG strategy with stock selection; however, if this strategy is not mentioned in fund's prospectus, it will be difficult to tout the fund as an ESG fund in marketing communications.
- Define the acronym "ESG" in communications.

Buzz Words to Avoid in Fund Marketing Communications

This is not an all-encompassing list, but it is always helpful to have an idea of the types of language that may receive comment from FINRA:

- Institutional quality/institutional access
- Unique
- "Like" statements (e.g. equity-like, bond-like, institutional-like)
- Leader
- Expert
- Protection/downside protection
- Solution
- Risk-free

Do Not Forget

- The FINRA member firm name must be included on all materials.
- Prospectus language must be at least the same font size/different text style as the main text of the communication and needs to be included in all marketing communications offering a fund.
- Performance disclosure legend must be same font size/different text style as the performance data in the communication and be placed in

close proximity of the first mention of performance.

- Watch out for forward looking statements. Hedging statements can help (i.e., we believe, we think, potentially, provide an opportunity for).
- FINRA prohibits back-tested data and projections.
- Bundling of FINRA filings is no longer permitted by FINRA. For example, a website post linking to a video, an email discussing the video, and a social media post referencing the video will now need to be submitted in AdCompliance as three separate items, and FINRA-filed individually, as applicable.

Additional Training

- Seeking tips to navigate the advertising compliance space? Partner with your Advertising Compliance Team.
- Launching a new product or working on a new marketing plan for existing products? Discuss your marketing plan with us to avoid unforeseen advertising compliance issues.
- Want additional training? Please contact your Relationship Manager!