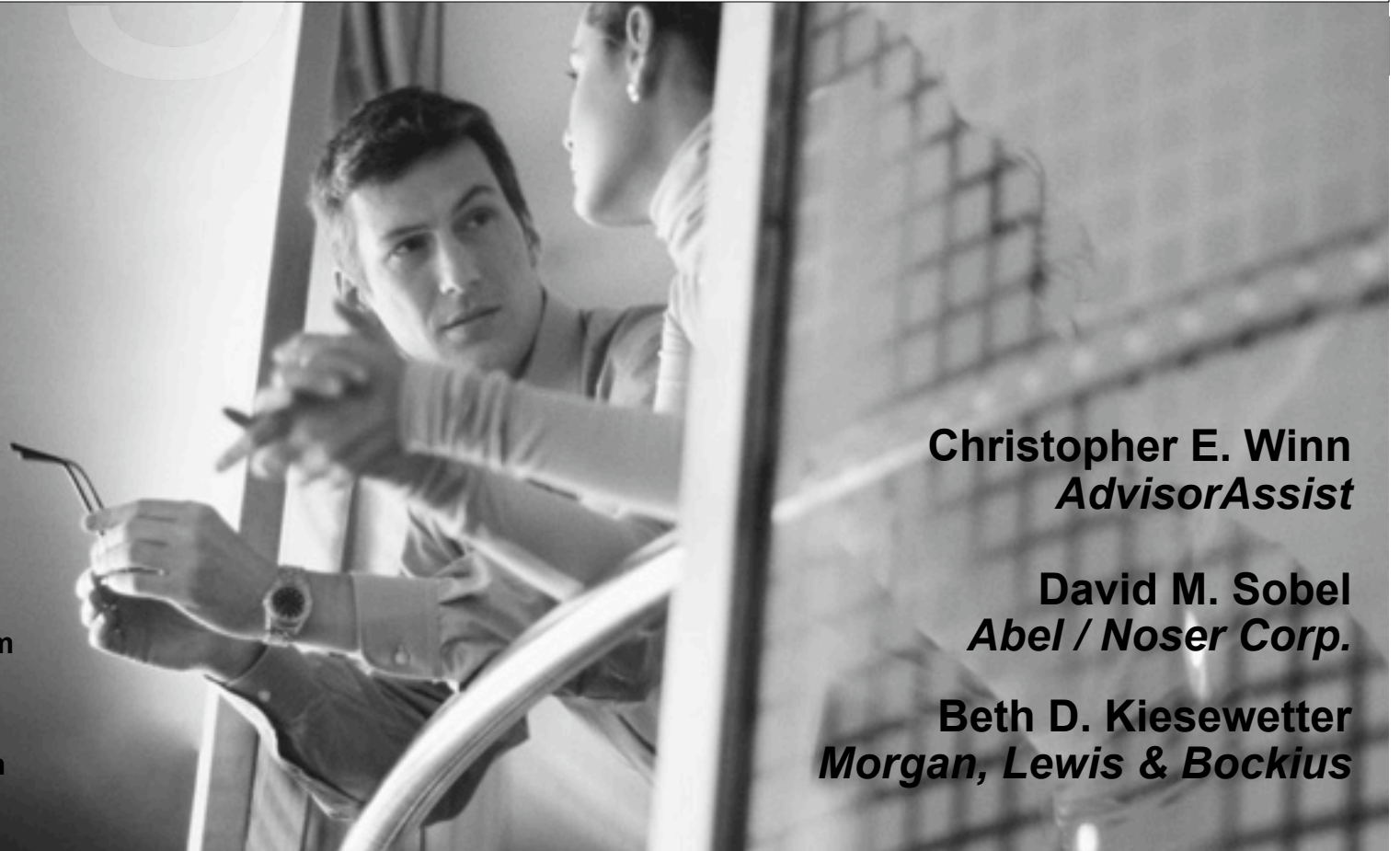


# Financial Markets World

## Social Media Compliance in Financial Services

### *Compliance and Records in the Social Media Age*



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# Compliance and Records in the Social Media Age

## *An Overview of Our Session*

- **SEC and FINRA Requirements**
- **Monitoring Standards**
- **Storage, Classification and Access/  
Retrieval**
- **Privacy, Confidentiality & Disclosure**
- **Developing New Instincts to Match New  
Technology**
- **Avoiding Common Mistakes**

Compliance and Records in the Social Media Age  
*An Overview of Our Session*

*However*

*We Would First Like to Meet You and  
Understand Your Social Medial Regulatory  
and Recordkeeping Concerns  
So That We May Address Them  
TODAY!*

# Compliance and Records in the Social Media Age

## *SEC and FINRA Requirements*

- **Social Media = Advertising**
  - **Advertising must be reviewed and monitored**
  - **Advertising and supporting materials must be maintained**
  - **Firms must have policies and procedures to address their use of Social Media as advertising**

# Compliance and Records in the Social Media Age

## *SEC and FINRA Requirements*

- **Broker-Dealers**
  - **FINRA released guidance this year on Blogs and Social Media sites that allow Registered Representatives to participate in Social Media without pre-approval of an individual post**
  - **Pre-Approved by the Broker-Dealer**
  - **Formal archiving process and technology solution**
  - **Principal review of the use of Social Media**
  - **Adherence to SEC Rule 17a-3 and 17a-4 and FINRA Books and Records requirements**

# Compliance and Records in the Social Media Age

## *SEC and FINRA Requirements*

- **Broker-Dealers**
  - **FINRA Regulatory Notice 10-06 (Jan. 2010)**
    - *Provides guidance on Blogs and Social Networking sites*
    - *NASD Rule 2210 – static content is considered “advertising” (principal pre-approval required) and interactive content is considered a “public appearance” (principal pre-approval not required)*
    - *NASD Rule 3010 – Supervisory responsibility to monitor*
    - *NASD Rule 2310 – Customer-specific suitability of recommendations*
    - *NASD Rule 3010, 3012 and FINRA Rule 3130 – Written Supervisory Procedures governing use of Social Media required*
    - *SEC Entanglement and Adoption Theories - Third party posts are not a firm communication unless Registered Representative has (1) been involved in the preparation of the post – “entangled” or (2) has “adopted” its content*

# Compliance and Records in the Social Media Age

## *SEC and FINRA Requirements*

- **Investment Advisors**
  - **Rule 206(4)-1 – “Advertising Rule”**
  - **No Testimonials**
  - **Any communication to more than 1 person is an advertisement!**
  - **No formal system requirements for archival by the Advisers Act or State Investment Advisor Regulations, but the regulators expect to see this in place**
  - **No pre-approval for any posts, unless firm policy**

# Compliance and Records in the Social Media Age

## *SEC and FINRA Requirements*

- **Investment Advisors**

- **What is an Advertisement under Rule 206(4)-1?**

### *LinkedIn*

- Your personal profile
- Your business profile
- Your status update
- Group affiliations and discussions
- Content submissions (i.e., new articles)
- Messages to more than one person
- Advertisements

### *Twitter*

- Your personal profile
- Your business profile
- Tweets and ReTweets
- Lists
- Private Tweets

### *Facebook*

- Your personal profile
- Your business profile
- Your status update
- Your wall
- Content submissions (i.e., new articles)
- Messages to more than one person
- Advertisements

### *Blogs and Web Sites*

- **Every page and post under your control or participation is an advertisement**

# Compliance and Records in the Social Media Age

## *Monitoring Standards*

- **Monitoring Standards for Broker-Dealer Firms**
  - **Suitability**
    - ***If a firm or its personnel recommend a security through a social media site it triggers suitability review requirements under NASD Rule 2310***
      - ***See Online Suitability (01-23) – “Call to Action”***
  - **Supervision**
    - ***Review to determine compliance with NASD Rule 2210 content requirements***
      - ***See FINRA Guidance Regarding Review and Supervision of Electronic Communications (07-59)***
    - ***Review for compliance with rules regarding specific subject matter***
      - ***Research reports (NASD Rule 2711); customer complaints (NASD Rule 3070); order errors and changes to account designations (NASD Rule 3110)***

# Compliance and Records in the Social Media Age

## *Monitoring Standards*

- **Monitoring Standards for Investment Advisors**
  - **Books and Records**
    - *Rule 204-2 requires all books and records, including advertisements and correspondence to be maintained for a period of at least 5 years.*
    - *Implement a mechanism to review policies and procedures as required by Rule 206(4)-7.*
  - **Supervision**
    - *Know what is being communicated. You are fiduciaries!*
    - *Any specific recommendations? Document sources.*
    - *No Testimonials!*
    - *Ensure you have a social media policy and train your IARs.*

# Compliance and Records in the Social Media Age

## *Monitoring Standards*

- **Monitoring Standards**
  - **Best Practices**
    - *Training personnel on Firm's regulatory obligations regarding operation and use of Social Networking Sites*
    - *Prohibit registered representatives from posting commentary on company profile*
    - *Involve multiple members of compliance in monitoring efforts*
      - Consider enabling the notification feature of social networking site when third party posts are made
      - Consider using computer monitoring technology
      - Pre-screen all material posted by firm personnel
      - Monitor websites frequently, at least daily
      - Implement well organized compliance files

# Compliance and Records in the Social Media Age

## *Storage, Classification and Access/Retrieval*

- **Storage, Classification and Access/Retrieval**
  - **Investment Advisor Recordkeeping**
    - *Rule 206(4)-2*
    - *Technology Neutral*
    - *Prompt Production During Exams*
    - *Supervisory Personnel Must Monitor*
  - **Broker-Dealer Recordkeeping**
    - *SEC Rules 17a-3 and 17a-4*
    - *WORM Technology and Indexing Required*
    - *Third Party Certifications Regarding Access Required*
    - *Prompt Production During Exams*
    - *Supervisory Personnel Must Monitor*

# Compliance and Records in the Social Media Age

## *Privacy and Confidentiality Issues*

- **Privacy, Confidentiality & Disclosure**
  - **Inappropriate dissemination of confidential information**
  - **Infringement of intellectual property**
  - **Identity theft**
  - **Harrassment / defamation**
  - **Post plain English disclosures regarding firm's regulatory status, terms and conditions for use, and editorial guidelines**

# Compliance and Records in the Social Media Age

## *Developing New Instincts to Match New Technology*

- *Developing New Instincts to Match New Technology*
  - There are a few technology vendors providing monitoring capabilities (*presenters do not endorse vendors – due diligence is critical*)
    - Smarsh – [www.smarsh.com](http://www.smarsh.com)
    - SocialWare – [info@socialware.com](mailto:info@socialware.com)
    - Arkovi – [www.arkovi.com](http://www.arkovi.com)
    - FaceTime – [www.facetime.com](http://www.facetime.com)

# Compliance and Records in the Social Media Age

## *Avoiding Common Mistakes*

- *Learn from others. Don't make these mistakes.*
  - *Forgetting Compliance Pre or Post Approval*
  - *Allowing Testimonials*
  - *Not Maintaining Adequate Books and Records*
  - *Not Monitoring your personnel*
  - *Not Segmenting your Network (personal vs. business)*
  - *Recommending Particular Investments*
  - *Privacy – Don't Communicate Private Information Over Open Networks*

# Compliance and Records in the Social Media Age

## *Reference Materials*

- SEC Interpretive Guidance
  - SEC Guidance on the Use of Company Web Sites (2008)
  - SEC Electronic Media Releases (1995, 1996 and 2000)
  - SEC Record Preservation Rule Amendment Release (1997)
- FINRA Regulatory Notices / Notice to Members
  - 10-06, 09-55, 07-59, 03-33, 01-23
- FINRA Podcast – February 8, 2010
  - Guidance on firms' use of Blogs and Social Networking Sites for Business Communications
- LIMRA Research Publications
  - Hot Topics – Marketing Through Social Networks (2010)
  - Testing the Waters: Social Media and the Financial Services Industry (2009)
- IMSA – Social Media WorkGroup
  - Social Media Policy Template is available at [www.IMSAethics.org](http://www.IMSAethics.org)

# Compliance and Records in the Social Media Age

***Thank You***  
***for participating in our***  
***Compliance and Records in the Social Media Age***

**QUESTIONS?**  
***Feel Free to Contact Us***

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