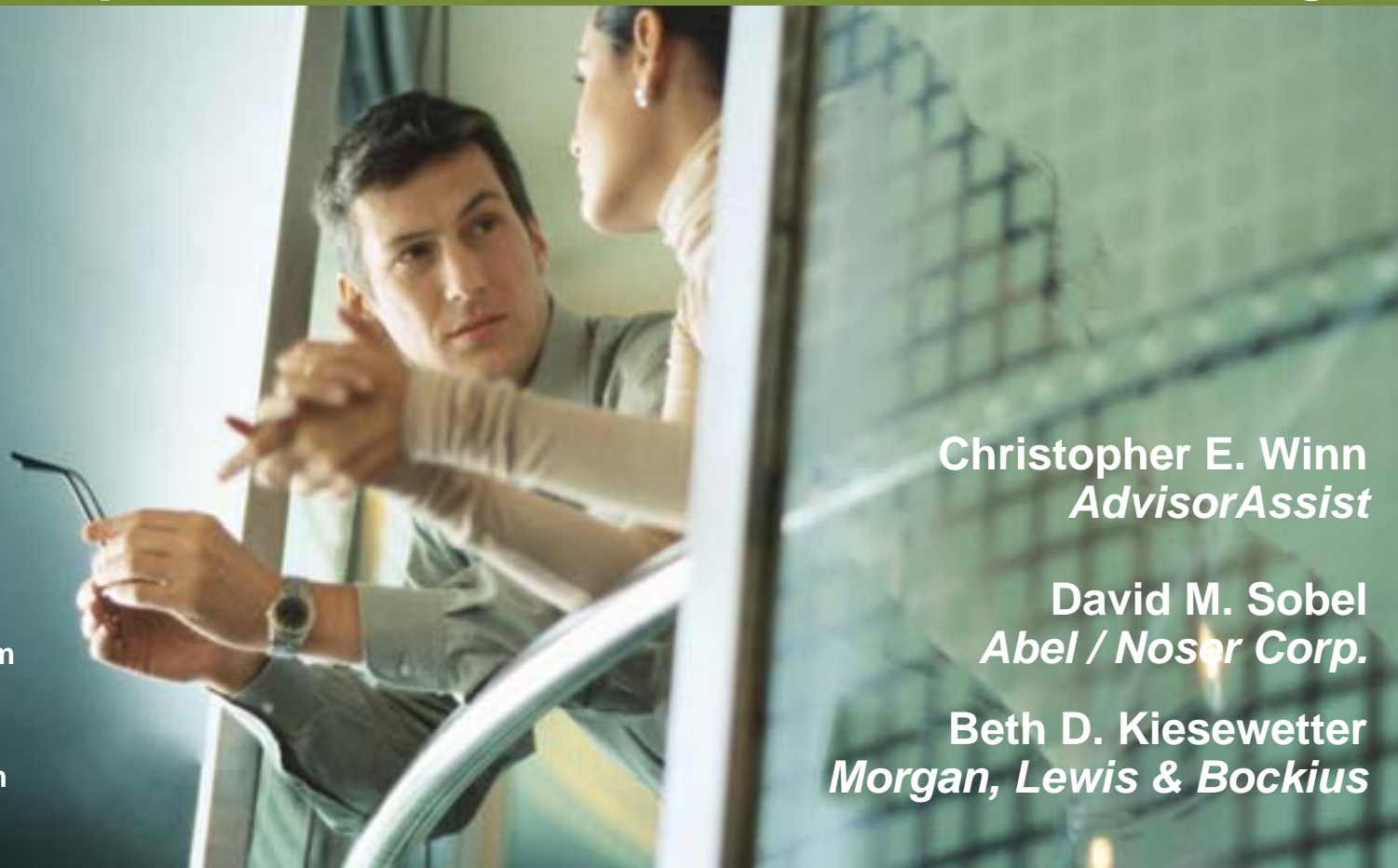


Financial Markets World
Social Media Compliance in Financial Services
Compliance and Records in the Social Media Age



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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!*

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SEC and FINRA Requirements

- **Social Media = Advertising for Investment Advisors**
 - 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

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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**

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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*

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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**

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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

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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*)

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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.*

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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

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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*

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Privacy and Confidentiality Issues

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

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Developing New Instincts to Match New Technology

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

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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*

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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

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Thank You
for participating in our
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QUESTIONS?
Feel Free to Contact Us

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