



Guide to the Internet for Registered Representatives

Introduction

NASD has developed this page to make registered representatives (RRs) aware of the compliance requirements and potential liabilities when using the Internet and electronic communications.

This page addresses some general compliance requirements that apply to electronic communications. It also discusses specific considerations relating to the use of e-mail, group e-mail, and Web sites including chat rooms and instant messaging. We have based the information on published rules, interpretations and notices. Wherever possible, a link to the actual text of the rule or interpretation is provided.

An RR's compliance responsibilities when communicating via the Internet or other electronic media are the same as in face-to-face discussions or in written communications with the public. In addition, RRs must be aware of internal firm policies and procedures that may limit, prohibit, or restrict the use of electronic communications.

General Compliance Requirements

Electronic communications may fall under any one of the following categories of communications. They may be considered as correspondence, public appearances, advertisements, sales literature, reprints and institutional sales material. These methods of communication are covered under the NASD Conduct Rules and also explained on the Advertising Regulation Web page. In general:

- Publicly available Web sites are considered **advertisements**.
- E-mail to 25 or more prospective retail customers is considered **sales literature**.
- E-mail to either a single customer (prospective or existing) or to an unlimited number of existing retail customers and/or less than 25 prospective retail customers (firm-wide) within a 30 day period is considered **correspondence**.

Communications with the public must:

- be based on principles of fair dealing and not omit material information, particularly risk disclosure;
- not make exaggerated, unwarranted, or misleading claims;
- give the investor a sound basis for making an investment decision; and
- not contain predictions or projections of investment results.

NASD would give close scrutiny to circumstances where an RR personally buys shares of a thinly traded stock and then publicly makes a buy recommendation, or promotes the stock in a chat room.

Suitability - RRs must have a reasonable basis for believing that each recommendation to a customer is suitable based on the information provided by the customer.

Conflicts of Interest - RRs must avoid any conflicts of interest in transactions with customers. Conduct Rule 2711, IM-2210-1 (6)(C) and Notices to Members 02-39 and 04-18 cover conflict of interest issues regarding research reports and stock recommendations.

Use of Current Information - RRs who communicate electronically must understand the importance of using current information. Outdated information runs a high risk of being inaccurate and misleading to investors.

Supervision - Conduct Rule 3010 requires member firms to supervise the activities of each RR. The supervisory responsibility of the member firm covers the use of e-mail, bulletin boards, chat rooms, and Web sites when it relates to the firm's business.

State Registration Requirements Apply - Each state has separate registration requirements for individuals doing business in that state. Use of e-mail, group e-mail, bulletin boards, chat rooms, and Web sites may be a solicitation of business. Generally, the solicitation of business in a state triggers the requirement for registration. RRs are advised to rely on their individual firms for guidance regarding state registration issues.

Use of E-Mail and Instant Messaging

Whether from the office or home, e-mail and instant messaging to the public falls under NASD jurisdiction. Frequently, RRs mistakenly believe that if they correspond with clients via e-mail or instant messaging from home the communication is not under the purview of their firm or regulators. The use of e-mail or instant messaging to communicate with individual clients may be considered correspondence or sales literature subject to NASD Conduct Rules.

Member firms are required to supervise and review business-related e-mail and instant messaging sent by RRs, whether from home or the office.

- NASD Conduct Rule 3010 - Supervision -- This NASD Rule addresses the review of an RR's electronic messages by a member firm. The Rule requires members to establish, maintain and enforce written procedures for advertisements, sales literature and correspondence, to ensure compliance with all applicable securities laws and rules. Therefore, RRs must know their firm's supervisory and review policies and comply with them, even if they are more restrictive than what is allowed under NASD rules. Many members restrict the use of e-mail communications with customers because of the difficulties of supervision and review. Some members prohibit the use of instant messaging altogether because of perceived difficulties in adequately supervising this activity. In fact, NASD Notice to Members 03-33 indicates that if a member is unable to establish an adequate supervisory program, the member must prohibit the use of instant messaging in customer communications. Members that permit instant messaging must use a platform that enables the member to monitor, archive, and retrieve message traffic. **Failure to follow the firm's supervisory**

and review procedures and regulations in general may subject an RR to either internal and/or regulatory disciplinary action.

- Notice to Members 99-03 provides a full discussion of how Rule 3010 applies to electronic communications.
- **NASD Conduct Rule 3110 - Books and Records** -- This NASD Rule requires that correspondence (both written and electronic) with public customers be maintained in compliance with applicable NASD rules and with SEC Rules 17a-3 and 17a-4. This means that an RR's e-mail or instant messaging to the public relating to the firm's business generated at the office or at home, is subject to these provisions. RRs should know and comply with their firm's policies in this area.

E-mail or instant messaging to the public from the office or home falls under NASD jurisdiction.

Prior written approval is required for all group e-mail not considered correspondence as defined.

Group e-mail or instant messaging is an identical electronic mail message sent to multiple individuals. This type of electronic message is generally considered sales literature. Whether it is considered sales literature or correspondence mainly depends on whether it is going to existing or prospective customers and the number of customers involved. Under Conduct Rule 2210, group e-mail or instant messaging to 25 or more prospective retail customers would be considered sales literature. The Rule requires that sales literature receive prior written approval by a registered principal. Depending upon the content, sales literature may also require filing with NASD's Advertising Regulation Department. RRs are required to work within their firm's policies and procedures to avoid compliance problems and potential liability.

Group e-mail or instant messaging categorized as sales literature must be approved prior to use by a registered principal of the member firm.

NASD Rule 2211 addresses the compliance requirements for institutional sales material, including electronic mail messages. The content compliance standards and supervisory obligations are generally the same for retail and institutional communications. However, e-mail communications that meet the definition of "institutional sales material" do not need to be filed with NASD's Advertising Regulation Department.

- **NASD Conduct Rule 2210(b) - Approval and Recordkeeping.** This NASD Rule requires that sales literature, both written and electronic, be maintained as part of the firm's records. Therefore, e-mails with the public relating to the firm's business are subject to these provisions. RRs must know what their firm's policies and procedures are in order to comply with these rules.

Electronic Chat Rooms

Chat room participation by RRs is considered a public appearance and subject to the same guidelines.

Therefore, RRs must follow the same requirements for participating in a chat room that they would if they were speaking in person before a group of investors. There are no filing requirements, but RRs are accountable under NASD Conduct Rules and the federal securities laws for what they say regarding securities or services. Also, member firms are responsible for supervising the business-related activities of RRs including chat room participation. Remember, these rules apply regardless of whether an RR is in the office or at home.

Because chat rooms contain live, unprepared communications, RRs are not required to get their comments approved in advance, unless their firm requires them to do so. In addition, chat room communications are not subject to the filing requirements of NASD Conduct Rule 2210(c). However, the content standards under Rule 2210(d) and IM-2210-1 do apply. RRs must check their firm's policy to see if they are allowed to participate in investment-related chat rooms and to seek permission from their firms to participate prior to doing so.

The fact that an individual is registered subjects him/her to a higher standard than members of the general public. Given the fast-paced environment of chat rooms, casual or off-handed statements have the potential of crossing the line between being a reasonable opinion and an exaggerated or unwarranted claim. Because

of the difficulties of supervision and the potential liabilities from participating in chat rooms, many firms limit or prohibit participation altogether.

The content standards of Rule 2210(d) and related IM-2210-1 apply to public appearances, including chat room participation.

Web Sites

Web sites are advertisements and are subject to all requirements of NASD Conduct Rule 2210.

There are no separate rules or guidelines for use in preparing advertising material for the Internet. Web sites are subject to the same standards as other forms of advertisements. All Web sites used in connection with a securities business must be approved prior to use by a registered principal and must comply with Rule 2210.

Following are two examples of Web site usage by RRs:

1. **Personal Web sites (not securities/investment related)** may contain a short biography or profile describing the individual as being an RR, provided securities or investment activities are not the focus of the information on the site. Such sites are not considered advertisements under NASD rules.
2. An RR's **personal profile** on a member firm's Web site is subject to NASD rules. In this case, the RR would be responsible for having such pages approved internally by a registered principal. These pages may be individually designed, or use the firm's pre-approved templates. Some firms provide templates for RRs to use, while others allow for more customization of the information.

Points to remember:

Member firm name required - Web sites must clearly and prominently include the name of the member firm (or a legal fictional name) by which the firm is commonly recognized or name required by any state or jurisdiction) so that investors know the firm with which they are doing business.

State registration may be required - Since Web sites can be viewed from anywhere, state registration/licensing requirements may apply. Be sure to check with your firm to ensure compliance with such requirements.

Research reports require approval - Research reports require approval, in writing, by a registered principal before they are posted on a Web site. Conduct Rule 2711, IM-2210-1 (6)(C) and Notices to Members 02-39 and 04-18 cover the rule prohibitions and the conflict of interest disclosures that must be made by a research analyst or included in a research report.

Use current information - Outdated information runs a high risk of being inaccurate and may mislead investors.

Disclose risk factors - Both the content of the risk disclosure and its location are important. Risk disclosure should clearly and accurately describe the risks involved. Disclosures should be included in the appropriate locations within the Web site and in the related material. This is important because visitors may jump from one Web page to another, or come to the site from different entry points. Investors should see the disclosures regardless of their entry point into the site.

Day Trading Rules - NASD Rules 2360 and 2361 apply to member firms that promote day trading strategies. Firms are required to furnish a risk disclosure statement to a non-institutional customer prior to opening an account for the customer. In addition, the firm will either have to (1) approve the customer's account for a day trading strategy, or (2) obtain from the customer a written agreement that the customer does not intend to use the account for day-trading purposes. As part of the account approval process, the firm is required to make a threshold determination that day trading is appropriate for the customer. Notice to Members 00-62, provides more information on these day-trading rules.

Speed & Reliability Claims - Communications that refer to the speed and reliability of a firm's electronic trading systems must not exaggerate the firm's capabilities. [Notice to Members 99-11](#) provides guidance about disclosures that firms provide to customers to educate them about the effects of market volatility and volume.

Linking to other Web Sites

Linking to other sites raises concerns because these sites may contain misleading or incorrect information. An RR's Web site should not have a link to a site that he/she knows or has reason to know contains false or misleading information about products or services. RRs should exercise the same care in choosing links as they would in referring customers to any outside source of information.

Linking to NASD Web Sites. A Web site may link to NASD Web sites provided:

- the link must be a text-only link clearly marked "NASD";
- the appearance, position, and other aspects of the link may not be such as to damage or dilute the goodwill associated with NASD's name and trademarks;
- the appearance, position, and other aspects of the link may not create the false appearance that an entity is associated with or sponsored by NASD;
- the link, when activated by a user, must display these sites full-screen and not within a "frame" on the linked Web site.

Pertinent Links:

- [Broker Guidance & Information](#)
- [Registered Representatives & Other Securities Industry Professionals](#)
- [Disciplinary Information](#)