

Short Story: The Coexistence of FINRA and Social Media

✘ By Jeff Mard, Vice President, [HMG Company](#)

[You walk into a conference room]

Hi there. Ever go into a conference room and... wait... if you are not working in the financial services space... take a moment to excuse yourself from this post.....

[After the conference room door closes]

Jeff: *[leaning over the table]* Ok, pfst... ever try to get rolling with a social media program... only to have the big bad world... err the Financial Industry Regulatory Authority (FINRA) grab the ear of your compliance officer and the whole “let’s launch social media” objective has the brakes put on it?

You: *[uncomfortable gulp]* Yupp.

Jeff: *[leaning forward... ever so slightly, voice softer]* No problem, here are some cliff-notes for you to memorize by chapter, verse... well, not exactly. My colleague [Erika Graff](#) was at Securities Industry and Financial Markets Association (SIFMA) conference the other day and shared with me FINRA’s playbook for making your life... well, um challenging.

You: *[showing a slight smile]* Well... is that so? What should I know?

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d back to regular conversation style] Consider these little ditties:

1. It is critical that you archive content shared (regardless if it is original or third-party content). I'm not a lawyer (but I play one in this script, LOL)... go w/three-year minimum.
 1. Supported by FINRA rules are 17a-3 and 17a-4 of the Security Exchange Act of 1934
2. Firms are required to have what is called WSPs (err, written supervisory procedures) and SCPs (supervisory control policies).
 1. Make sure you consider areas where revenue potential is significant and at the same time problem areas where in the past... you had issues with performance. Oh, and if regulators had gone after this subject matter... be extra careful and watch where you step!
3. Start slowly, THEN set the masses loose. But keep governance over all content and social efforts so you have a proper protocol in place should there be an issue requiring legal changes.

1. The policies for supervision need to be in writing and documented. That means record the reviewer, date, firm's action and any other pertinent details.
4. Be careful with content shared that is 'interactive' meaning it could change (opposite of static content that does not change). Twitter is a good example to watch out for as hashtags can be taken over (remember when McDonald's got bamboozled a few years ago? Mashable Video).
 1. For example, imagine you share a post and then the comments/information related to it is inappropriate and/or illegal... well you just got linked to the 'bad stuff.'
 2. Static content requires review and approval by a principal of the firm, "interactive" on the other hand, MIGHT not. Yep, might not. It's not that cut and dry.
5. Not sure if you fall under FINRA guidelines in a public setting? There are three areas... retail communications, correspondence and institutional communications. For the sake of this discussion, here are some areas you can wiggle around FINRA on:
 1. Research reports on debt and equity securities that are approved by Series 16 analyst.
 2. FINRA approved messaging that was previously filed by shared person.
 3. Content shared during an online interactive forum.
 4. Any messaging that does not promote product and services of the firm.
6. Make sure your broker-dealers are aware of the need to retain, retrieve and supervise business communications.
 1. Make sure whomever is overseeing the BYOD (Bring Your Own Device) program is aware of the FINRA risks.
7. Not sure what is in compliance and what isn't, read FINRA Rule 2210(d)(1) before you go to bed for one month

straight... and make sure your strategy promotes the following:

1. All content shared is done in a 'professional' (no jokes) and backed up by facts.
2. Nothing could be construed as ambiguous and/or omitting any facts that could dispute the messaging shared.
3. We all like to exaggerate to prove a point... this is not the time or place to do so.
4. Keep the content relevant and appropriate to the audience / social media channel.

Don't be a statistic. Being non-compliant is no joke. Want proof that you could go directly to jail and not collect \$200? Ask Ferrari... they had to pay \$10,000 when they did not enforce WSPs earlier this year on May 26th. Click here to see some fines that were levied in just the month of July.

Hey, you in the back... Aren't you a brand manager @ the wine and spirits company? No worries, many of these little ditties apply to your space as well.

But, don't let this turn you away from social media. Sometimes you might think it is better to assume no risk and just throw in the towel. Who needs social media anyway? YOU do. Your brand does. We all do. If you're not in the space someone else WILL be and they will get the business. So, just do it right. Understand what it takes to be in compliance and mitigate the risk while ensuring your brand and advisors are invited to the table.

[And cue the next group gently tapping an iPhone on the conference room glass... Audio goes like this: "I reserved the conference room... don't you need to start working with Jeff and his team on a social media strategy?"]

Sources:

[FINRA Regulatory Notice 15-16 – Communications with the](#)

Public

FINRA Rule 2210

Locke Lord

2015 SIFMA Social Media Seminar (10/22/15)

About the Author: Since 1997, Jeff Mard has cut his teeth working with a blend of Fortune 500 clients on the agency side. Jeff has had the privilege of driving dozens of successful, award winning fully integrated campaigns that often test the boundaries of 'traditional marketing' methods. Currently he sits on the senior leadership team at [HMG Company](#) where he is responsible for driving key client relationships for a variety of Fortune 500 clients in Banking, Wine & Spirits, Auto-parts, Insurance, Start-ups and more. As a digital growth hacker, he is a whiz at breaking down a complex challenge and simplifying it thru a series of easy to consume strategies (e.g. he built a brand ambassador program to over 30,000 students @ 3,000+ universities with \$0 media support). Most recently he helped a Fortune 20 company embark on a social media strategy that started with Facebook and now encompasses over a half-dozen social platforms. When not working he spends time with his family in Western MA where he is an avid skier, triathlete, golfer and fan of anything outdoors. He can be found on Twitter via [@JeffMard](#) and on LinkedIn @ <https://www.linkedin.com/in/jeffmard>.