The SEC's ReTIRE Initiative: An Examination Initiative Focused on Products and Services Provided to Retail Investors Saving for Retirement

By Robert L. Tuch

Introduction

As financial services companies continue to address the needs of retail investors who are saving for retirement, regulators have sharpened their focus on how best to protect the interests of these investors. Last June, the Securities and Exchange Commission (the "SEC"), through its Office of Inspections and Examinations ("OCIE"), issued a National Exam Program Risk Alert, entitled *Retirement-Targeted Industry Reviews and Examinations Initiative* (the "Risk Alert").[1] Referring to this as its ReTIRE Initiative, OCIE announced that, through its National Examination Program, it will conduct examinations of SEC-registered investment advisers and broker-dealers (collectively, "registrants"). The ReTIRE Initiative was launched to address the challenges facing retail investors who, in many cases, are more dependent than ever on their own investments for retirement.

The Risk Alert noted that these examinations will focus on certain higher-risk areas of registrants' sales, investment and oversight processes, with particular emphasis on select areas where retail investors saving for retirement may be harmed. The Risk Alert discussed (i) registrants' obligations when making recommendations or providing advice, (ii) the need to properly address conflicts of interest, (iii) the importance of properly supervising representatives and adopting effective compliance programs, and (iv) the need to ensure that marketing materials are accurate and not misleading. In the sections that follow, these topics are addressed. Examiners may select additional topics based on operational and other risks identified during the examinations.

Reasonable Basis for Recommendations

One of an investment adviser's duties is to provide clients with suitable investment advice. This duty generally requires an adviser to make a reasonable inquiry into the client's financial situation, investment

Robert L. Tuch is a senior consultant with Oyster Consulting, LLC. With over 25 years of experience in the financial services industry, Bob provides advice on broker-dealer compliance and supervision issues as well as insurance agency compliance and supervision issues.*

© 2016, Robert L. Tuch

experience and investment objectives, and to make a reasonable determination that the advice is suitable in light of the client's situation, experience and objectives.[2] Because investment advisers have a fiduciary obligation to their clients, they must also manage client portfolios in the best interests of clients, make full and fair disclosure of all material conflicts of interest and seek best execution for client transactions.[3]

The Financial Industry Regulatory Authority ("FINRA") requires member firms and their associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security is suitable for a customer, based on the information obtained to ascertain the customer's investment profile.[4] Relevant factors, for purposes of determining a customer's investment profile, include, but are not limited to:

- the customer's age
- other investments
- the customer's financial situation and needs
- tax status
- investment objectives
- investment experience
- investment time horizon
- liquidity needs
- risk tolerance

With these obligations in mind, the OCIE staff plans to assess the activities of registrants and their representatives, to the extent applicable and required, when (i) selecting the type of account; (ii) performing due diligence on investment options; (iii) making initial investment recommendations; and (iv) providing ongoing account management.

Age, Investment Time Horizon, Liquidity Needs and Risk Tolerance

Many registrants have stepped up their efforts to market products and services to investors who are approaching retirement. Upon discussing the suitability of recommendations to older investors in Regulatory Notice 07-43, FINRA provided some insights to member firms regarding important factors to consider.[5]

> As investors age, their investment time horizons, goals, risk tolerance and tax status may change. Liquidity often takes on added importance. And, depending on their particular circumstances, seniors and retirees may have less tolerance for certain types of risk than other investors. For example, retirees living solely on fixed incomes may be more vulnerable to inflation risk than those who are still in the workforce, depending on the number of years those retirees are likely to rely on fixed incomes. Likewise, investors whose investment time horizons afford less time or opportunity to recover investment losses may be disproportionately affected by market fluctuations.
>
> Therefore, firms cannot adequately assess the suitability of a product or transaction for a particular customer without making reasonable efforts to obtain information about the customer's age, life stage and liquidity needs.[6]

Recommendations to Roll Over Employer-Sponsored Retirement Plan Assets to Individual Retirement Accounts

In Regulatory Notice 13-45, FINRA reminded members of their responsibilities when (i) recommending a rollover or transfer of assets in an employer-sponsored retirement plan to an Individual Retirement Account ("IRA"), and (ii) marketing IRAs and associated services.[7] In particular, the Notice addressed firms' recommendations to participants in employer-sponsored retirement plans who terminate their employment and must determine how to invest their plan assets. In this situation, the plan participant leaving an employer typically has four options (and may engage in a combination of these options):

- leave the money in the former employer's plan, if permitted;
- roll over the assets to the new employer's plan, if one is available and rollovers are permitted;
- roll over the assets to an IRA; or
- cash out the account value.

The Notice indicates that these options offer advantages and disadvantages, depending on desired investment options and services, fees and expenses, withdrawal options, required minimum distributions, tax treatment and the investor's unique financial needs and retirement plans.

Regulatory Notice 13-45 further indicates that (i) a broker-dealer's recommendation that an investor roll over retirement assets to an IRA typically involves securities recommendations subject to FINRA rules, and (ii) any recommendation to sell, purchase or hold securities must be suitable for the customer and the information that investors receive must be fair, balanced and not misleading.[8]

Best Practice Recommendations

The following are recommended practices that may be appropriate for consideration by management personnel and compliance professionals.

- Registrants should make reasonable efforts to obtain information about the life stage, plans for retirement and liquidity needs of clients or customers.
- For each product that is proposed for sale, registrants should conduct appropriate due diligence regarding the product's features and material risks, and determine whether the product can be suitable for clients or customers based on an understanding of potential risks and benefits.
- Registrants should carefully consider the risk of a product with the age and retirement status of the client or customer in mind, including its market, inflation and issuer credit risk. Certain products or strategies may be unsuitable because of time horizon considerations, liquidity considerations, volatility or inflation risk.
- Before making a product available to representatives, registrants should provide them with adequate training regarding (i) product features, benefits and material risks, and (ii) disclosures that are necessary and appropriate to ensure a proper understanding of the product.
- Registrants should explain recommended transactions and strategies in a manner that is reasonably likely to facilitate an investor's understanding of key benefits and risks.
- For registrants with associates who provide educational information only to plan participants, registrants should adopt measures that are reasonably designed to ensure that these associates do not make product recommendations. Such measures should include training concerning statements that may constitute a recommendation, thereby triggering the application of FINRA Rule 2111.
- Registrants should evaluate client and customer account portfolios in light of any material life changes or changes in investment objectives or goals. Investment advisers should periodically monitor client portfolios in an effort to ensure consistency with clients' investment objectives.

Conflicts of Interest

Views of the Regulators

The SEC and FINRA each are looking closely at the ways in which registrants manage conflicts of interest and potential conflicts of interest.

OCIE has indicated that the SEC staff would look at specific conflicts of interest, steps registrants have taken to mitigate conflicts and the sufficiency of disclosures made to investors.[9] OCIE has also noted that the SEC staff would look at the overall governance framework that registrants have in place to manage conflicts on an ongoing basis.[10]

In 2012, FINRA announced that it was undertaking a review process to better understand industry practices and determine whether member firms were taking reasonable steps to properly identify and manage conflicts that could affect their customers in the marketplace.[11] In October 2013, FINRA published a report (the "FINRA Conflicts Report") that summarized its findings, including its identification of conflicts management practices that member firms should consider and, as appropriate, tailor to their specific businesses.[12] The FINRA Conflicts Report addressed several categories of conflicts and identified several effective practices based on its findings. The following were included as effective compensation-related practices:

- Avoid or minimize thresholds that enable associates to increase their compensation disproportionately through an incremental increase in sales.
- Minimize incentives to favor one product type (e.g., equities, mutual funds, variable annuities) over another.
- Reduce the incentive to prefer one mutual fund or variable annuity over a comparable product by capping the gross dealer concession that will be credited to an associate's production.

In Regulatory Notice 13-45, FINRA noted that member firms and their representatives that recommend that an investor roll over plan assets to an IRA may earn commissions or other fees, whereas a recommendation that an investor leave his plan assets with his old employer or roll the assets to a plan sponsored by a new employer likely results in little or no compensation. A similar observation was made regarding an investment adviser representative who may earn an asset-based fee in connection with a recommendation to roll over plan assets to an IRA. FINRA urged broker-dealers to review their retirement services activities to assess conflicts of interest. In so doing, FINRA observed that firms must supervise these activities to reasonably ensure that conflicts of interest do not impair the judgment of a registered representative about what is in the customer's best interest.[13]

As financial services companies continue to address the needs of retail investors who are saving for retirement, regulators have sharpened their focus on how best to protect the interests of these investors.

Additional Effective Practices

As noted above, investment advisers have a fiduciary duty to make full and fair disclosure of all material conflicts of interest. The FINRA Conflicts Report notes that, for member broker-dealer firms, an effective practice framework for managing conflicts of interest includes the disclosure of conflicts of interest, taking into consideration the different needs of retail and institutional customers. Here are some additional effective practices that should be considered:

- Define conflicts of interest in a way that is relevant to the firm's business.
- Train staff to identify and manage conflicts in accordance with firm policies and procedures.

Supervision and Compliance Controls

The Risk Alert reminds registrants of their obligations to reasonably supervise persons acting on their behalf and adopt effective compliance programs. This section addresses rule provisions that govern supervisory policies and compliance programs. The rule provisions contain various requirements that are designed for the protection of all investors. They are discussed here because the Risk Alert makes it clear that the OCIE staff will review registrants' controls, oversight and supervisory policies and procedures, as appropriate, for compliance with applicable rules.

Written Supervisory Policies and Procedures

Under FINRA rules, broker-dealers must establish written supervisory policies and procedures that are reasonably designed to ensure compliance with applicable securities laws and regulations and FINRA rules. FINRA Rule 3110[14] requires each member firm to have reasonably designed written supervisory procedures ("WSPs") to supervise the activities of its associated persons and the types of businesses in which it engages. Among other things, the WSPs must address supervision of supervisory personnel and provide for the review of a firm's securities business, correspondence and internal communications, and customer complaints. Rule 3110 also contains requirements to designate and register branch offices and offices of supervisory jurisdiction and conduct internal inspections. FINRA Rule 3120[15] requires a firm to have a system of supervisory control policies and procedures that tests and verifies a firm's supervisory procedures. Risk-based methodologies and sampling may be used to determine the scope of testing. The testing ensures that a firm's supervisory procedures are reviewed and amended regularly in light of changing business and regulatory environments.

Registered investment advisers have a continuing responsibility to supervise all persons acting on their behalf. Each registered investment adviser must adopt and implement supervisory procedures that are reasonably designed to prevent violations of the Advisers Act.

The SEC can sanction registrants that fail to reasonably supervise their personnel who violate applicable laws or regulations.[16] Upon designing their WSPs, registrants should identify risks, based on an assessment of their business operations, and create a supervisory structure that adequately addresses those risks.

With respect to retail sales to investors saving for retirement, WSPs should be designed to (i) ensure that representatives perform appropriate customer-specific suitability analyses, and (ii) ensure that registrants monitor the suitability of representatives' recommendations around key liquidity events in an investor's lifecycle where the impact of those recommendations may be particularly significant (e.g., when an investor rolls over his or her 401(k) plan assets). In addition, WSPs should include a surveillance program that enables registrants to identify spikes in a representative's sales of a particular product. If a significant increase is discovered, a suitability analysis can be conducted regarding recommendations of that product.

Effective Compliance Programs

FINRA Rule 3130[17] addresses the compliance and supervisory processes of FINRA member firms. It requires firms to designate a Chief Compliance Officer ("CCO") and contains an annual certification requirement. Under this certification requirement, a firm's Chief Executive Officer ("CEO") or equivalent officer must certify annually that the firm has in place processes to establish, maintain, review, test and modify policies and procedures reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. A firm's processes must be evidenced in a report submitted to the firm's board of directors and audit committee (or equivalent bodies). The CEO must further certify to having met with the CCO in the preceding 12 months to discuss the firm's processes and other specified matters. The intent of Rule 3130 is to increase attention to firms' compliance programs by requiring substantial and purposeful interaction between business managers and compliance officers.

Under Advisers Act Rule 206(4)-7, each registered investment adviser must establish an internal compliance program that addresses the firm's performance of its fiduciary and substantive obligations under the Advisers Act. The program must include written policies and procedures that are reasonably designed to prevent the firm or its personnel from violating the Advisers Act. Upon designing its compliance policies and procedures, investment advisers should identify conflicts and other compliance factors creating risk exposure in light of their particular business operations. The SEC has stated that these policies and procedures should cover, at a minimum, the following areas to the extent applicable to the investment adviser:

- portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives;
- trading practices, including procedures by which the investment adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services and allocates aggregated trades among clients;
- proprietary trading of the firm and personal trading activities of supervised persons;
- the accuracy of disclosures made to investors, clients and regulators, including account statements and advertisements;
- safeguarding of client assets from conversion or inappropriate use by advisory personnel;
- the accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;
- marketing advisory services, including the use of solicitors;
- processes to value client holdings and assess fees based on those valuations;
- safeguards for the privacy protection of client records and information; and
- business continuity plans.[18]

Marketing and Disclosure

The OCIE staff has indicated that it will review registrants' brochures, sales and marketing materials, and disclosures to retail investors. This will be undertaken to determine whether: (i) the content within these materials and the disclosures are accurate and do not omit material information; (ii) fee disclosures are accurate and complete; and (iii) credentials or other endorsements are valid and meet any stipulated standards.

Sales and Marketing Materials

Under FINRA Rule 2210, member firms must ensure that their communications with the public are fair and balanced and provide a sound basis to evaluate the facts about any particular security or type of security, industry or service.[19] No broker-dealer may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. In addition, no broker-dealer may make a false, exaggerated, unwarranted or misleading statement or claim in any communication with the public, or publish, circulate or distribute any public communication that the broker-dealer knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

In Regulatory Notice 13-45, FINRA addressed these content standards in the context of a broker-dealer's marketing of IRAs and related services. Applying Rule 2210 to these activities, FINRA noted that, whether it be in written sales material or an oral marketing campaign, it would be false and misleading to imply that a retiree's only choice, or only sound choice, is to roll over plan assets to an IRA sponsored by the broker-dealer. FINRA further noted that the marketing of IRA rollover services must be balanced by a discussion of other available options and how they compare to the IRA offered, particularly with regard to fees.

Advisers Act Rule 206(4)-1 addresses advertisements by investment advisers.[20] Rule 206(4)-1 broadly defines the term "advertisement" to include newsletters, marketing brochures, internet websites, broadcast advertising, mass mailings, telemarketing scripts and press releases, among other things. The Rule identifies certain prohibited activities that are deemed to be fraudulent, deceptive or manipulative. Included are advertisements that contain any untrue statement of a material fact or are otherwise false or misleading.

OCIE has announced this multi-year initiative with a view toward encouraging registrants to reflect upon their practices, policies and procedures … and to promote improvements in their supervisory, oversight and compliance programs.

With the foregoing in mind, registrants should review written materials that are made available to investors and determine whether they are presented in a balanced manner (including an adequate discussion of risks), with a sufficient level of clarity. Any scripts, speeches or other proposed oral presentations should be reviewed as well. The following are factors that registrants may wish to consider for purposes of determining whether an advertisement or other marketing materials may be misleading:

- the presence or absence of any explanations that are necessary to prevent a statement from being misleading;
- any misrepresentations of future gains, income or expenses;
- any portrayals of past performance that imply that past results will be repeated in the future, or that cannot be justified under the circumstances;
- any discussion of the benefits of an investment or investment strategy without adequately addressing relevant risks or limitations; and
- any exaggerated or unsubstantiated claims.

Disclosures Regarding Fees

In Regulatory Notice 13-23, FINRA provided guidance concerning communications with the public relating to fees associated with retail brokerage accounts and IRAs.[21] The Notice cautioned members concerning the use of overly broad language in sales materials that implies there are no fees charged to investors who have accounts with a firm. Any implication that an account would be "free" or have "no fee" would be viewed by FINRA as a violation of FINRA Rule 2210 if, in fact, the account involves some cost to investors, which could be in the form of maintenance fees, account closing fees, costs related to underlying investments and/or costs associated with brokerage services.

The Notice noted the following regarding the requirements of Rule 2210:

> FINRA Rule 2210 requires that broker-dealers' communications are fair and balanced and do not omit material information that would cause them to be misleading. Rule 2210 also requires that communications provide a sound basis for evaluating the facts with respect to any product or service. Accordingly, claims regarding fees must be accompanied by clear disclosure of the types of fees that may be charged. For example, if an account offered by a broker-dealer involves account maintenance and closing fees, fees associated with the ownership of investments in the account or brokerage service fees, a stand-alone claim such as "Start investing for less with no account opening fees" would not comply with the rule. The claim could be compliant, however, if it explained other fees that applied. For example, the following modified claim may be fair and balanced: "Start investing for less with no account opening fee. Other account fees, fund expenses, brokerage commissions and service fees may apply."

The Notice also cautioned members regarding the use of footnotes to disclose information about other fees that may apply. In that regard, information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.[22]

Aggressive or Misleading Sales Tactics

Regulators have focused a great deal of attention on the proper treatment of senior investors. Much attention has been directed toward unsuitable sales; however, regulators have also expressed concern regarding aggressive and misleading sales tactics.[23] Regulatory Notice 07-43 provides several examples of problematic sales tactics that have been used in connection with "free lunch" seminars aimed exclusively or primarily at seniors or persons at or nearing retirement. Among the more prevalent problematic sales tactics identified during regulatory examinations and included within the Notice were (i) inaccurate or exaggerated claims regarding the safety, liquidity or expected returns of the investment or strategy being touted; (ii) scare tactics (e.g., comments regarding the possibility of audience members becoming financially dependent on family members); (iii) misrepresentations or material omissions about the product or strategy; and (iv) misleading credentials used by persons sponsoring or participating in the seminar.

These regulatory examinations, conducted by FINRA, OCIE and state securities regulators, led to the presentation of a report that was jointly issued by FINRA, OCIE and the North American Securities Administrators Association (the "Examination Report").[24] Included within the Examination Report was an Appendix, entitled *Effective Compliance and Supervisory Practices*. The Appendix notes that, during examinations of securities firms that provided "free lunch" seminars and in other examinations, examiners took note of several supervisory and compliance practices that appeared to be effective in ensuring adequate supervisory oversight and compliance with the securities laws with respect to sales seminars. The Appendix further notes that, while these practices are not specifically mandated by the securities laws, individually or in combination they may be helpful to consider as securities firms are reviewing their supervisory and compliance practices in these areas. Set forth below are a few of the key practices identified in the Appendix.

- The firm's policies and procedures clearly set forth the process for proposing seminars and related advertising materials, and they were made known to all firm employees.
- Supervisory reviews of advertising and sales materials generally identified disclosure mistakes and potential problem areas that were corrected prior to the time the advertising materials were to be used.
- Written guidance was provided to all individuals who may be involved in sales seminars – the registered representatives who conduct sales seminars, the branch office manager and other supervisors who review and approve the seminars and sales materials, as well as compliance staff who may also review the sales seminars and materials prior to use. The guidance provided clear explanations of what was permissible and what was not permissible, both in terms of compliance with the securities laws and compliance with the firm's own policies.
- Written checklists were used to aid firm employees in reviewing and approving sales seminar advertisements and sales literature to ensure that the materials used complied with regulatory requirements and the firm's policies.
- Materials used for sales seminars were maintained in a centralized location. All relevant materials were maintained, including a copy of the request to host the seminar with indications of approval by the branch office manager and any other authorized approving official. The file also included the title of the seminar, date, location, speaker, any guest speakers, the date the approval was given and the list of people who were invited to attend the seminar.

The following are additional practices to consider regarding sales seminars: registrants' policies and procedures should clearly indicate that invitations must adhere to the same content standards as those that apply to all other sales materials. The policies and procedures should also require all presenters to identify themselves as representatives of the firm.

Use of Designations and Credentials

The prohibitions noted above regarding false, exaggerated, unwarranted or misleading statements or claims would certainly apply if a financial professional were to use a designation or credential that has been made up or is presented in a misleading manner. Regulators have expressed particular concern about the proliferation of designations that suggest an expertise in retirement planning or financial services for seniors.[25] While some firms ban the use of senior designations, many others allow their use, subject to predetermined standards that are set forth or referenced in their WSPs. In Regulatory Notice 11-52, FINRA reminded members of their obligations regarding the supervision of registered persons using senior designations and discussed measures that may assist firms in complying with their supervisory obligations.[26] The Notice expressed the view that investors are unlikely to differentiate between designations that represent an enhanced level of proficiency in dealing with financial matters relevant to senior investors, on the one hand, and those that are simply used as a marketing tool. The Notice informed members that they must have supervisory procedures in place that are reasonably designed to prevent registered persons from using a senior designation in a manner that is unethical or misleading.

A common practice in this area is the maintenance of a list of all approved professional designations, based on established criteria. With this approach, firms can include designations based upon predetermined standards and require representatives desiring to use a designation not on the list to submit a request for approval. Requests for approval are typically considered by a committee comprised of supervisory personnel, compliance personnel and/or legal department personnel. The committee may include some or all of the same personnel who established the criteria for the list of approved designations. The following are considerations identified in Regulatory Notice 11-52 that some firms have taken into account when establishing such criteria:

- a rigorous curriculum;
- an emphasis on ethics;
- continuing education requirements;
- a method for determining the registered person's status regarding the designation; and/or
- a public disciplinary process.

Conclusion

Registrants have been informed by the OCIE staff that risk-based examinations of registrants will focus on products and services offered to retail investors saving for retirement. OCIE has announced this multi-year initiative with a view toward encouraging registrants to reflect upon their practices, policies and procedures in the areas discussed in the Risk Alert and to promote improvements in their supervisory, oversight and compliance programs. This article has been prepared to assist registrants in these efforts.

ENDNOTES

* Robert Tuch has served as in-house counsel for Nationwide Financial Services, Inc., an affiliate of Nationwide Insurance Company, and BISYS Fund Services, a mutual fund administrator and product distributor. At Nationwide, he managed a practice group that supported Nationwide-affiliated broker-dealers and provided legal support for Nationwide insurance agents. At BISYS, he provided legal support for BISYS mutual fund clients, including the preparation and review of mutual fund registration statements, the review of advertising and sales literature and the preparation of board meeting agendas, resolutions and minutes. Prior to serving in these in-house counsel roles, Bob held the position of Attorney Adviser in the Investment Management Division of the SEC.

[1] SEC, National Exam Program Risk Alert, Retirement-Targeted Industry Reviews and Examinations Initiative (June 22, 2015).

[2] *See* Suitability of Investment Advice Provided by Investment Advisers, Investment Advisers Act Release No. 1406 (March 16, 1994). In Release No. 1406, the SEC proposed a rule under the anti-fraud provisions of the Investment Advisers Act of 1940 (the "Advisers Act") requiring that advisers give clients only suitable advice. Although the rule was never adopted, the SEC staff takes the position that the rule would have codified existing suitability obligations of advisers and, as a result, the proposed rule reflects an obligation of advisers under the Advisers Act.

[3] *See* Registration Under the Advisers Act of Certain Hedge Fund Advisers, Investment Advisers Act Release No. 2333 (December 2, 2004), which discusses an investment adviser's fiduciary obligation to clients.

[4] FINRA Rule 2111 (Suitability).

[5] FINRA, Regulatory Notice 07-43 (September 2007).

[6] *See* FINRA, Regulatory Notice 07-43 at pages 2-3.

[7] FINRA, Regulatory Notice 13-45 (December 2013).

[8] The Notice states in a footnote that Rule 2111 applies only to explicit hold recommendations, and does not apply when a broker-dealer is silent regarding security positons in an account.

[9] *See* SEC, Examination Priorities for 2013 (February 21, 2013).

[10] Id.

[11] FINRA, Letter to Firms Announcing Conflicts Review (July 2012).

[12] FINRA, Report on Conflicts of Interest (October 2013).

[13] *See* FINRA, Regulatory Notice 13-45, supra, note 7.

[14] FINRA Rule 3110 (Supervision).

[15] FINRA Rule 3120 (Supervisory Control System).

[16] *See* Sections 15(b)(4)(E) and 15(b)(6)(A) of the Securities Exchange Act of 1934 and Sections 203(e)(6) and 203(f) of the Advisers Act.

[17] FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes).

[18] *See* Investment Advisers Act Release No. 2204 (December 17, 2003).

[19] FINRA Rule 2210 (Communications with the Public).

[20] Rule 206(4)-1 (Advertisements by Investment Advisers).

[21] FINRA, Regulatory Notice 13-23 (July 2013).

[22] *See* FINRA Rule 2210(d)(1)(C).

[23] *See* Regulatory Notice 07-43, supra, note 5.

[24] Protecting Senior Investors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars (September 2007).

[25] *See*, for example, FINRA, Regulatory Notice 07-43, supra, note 5.

[26] FINRA, Regulatory Notice 11-52 (November 2011).

This article is reprinted with permission from *Practical Compliance and Risk Management for the Securities Industry,* a professional journal published by Wolters Kluwer Financial Services, Inc. This article may not be further re-published without permission from Wolters Kluwer Financial Services, Inc. For more information on this journal or to order a subscription to *Practical Compliance and Risk Management for the Securities Industry,* go to **pcrmj.com** or call **866-220-0297**