



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Disclosure Innovations and Digital Marketing Compliance

Friday, October 25, 2019

8:30 a.m. – 9:30 a.m.

In the rapidly developing world of digital marketing, how can firms stay in compliance? Can firms communicate relevant, meaningful information in the digital age? Attend this session to experience how industry and regulatory experts are grappling with these challenges. The panel covers current topics including how firms engage technology to address their compliance obligations and creative ways to use effective disclosure.

Moderator: Amy Sochard
Senior Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Shayna Beck
Head of Advertising and Communications
Vanguard Group, Inc.

Alexander Gavis
Senior Vice President and Deputy General Counsel
Fidelity Investments

Thomas Pappas
Vice President, Advertising Regulation
FINRA Advertising Regulation

Disclosure Innovations and Digital Marketing Compliance Panelist Bios:

Moderator:

Amy C. Sochard is Senior Director in FINRA's Advertising Regulation Department. The department helps protect investors by ensuring broker-dealer members of FINRA use advertisements and other sales communications that are fair, balanced and not misleading. Ms. Sochard leads the department's complex and targeted review activities and serves as liaison to FINRA's Member Supervision and Enforcement departments. She also oversees staff dedicated to the routine review of communications filed with the department by broker-dealers. Ms. Sochard assists in the development of rules and interpretations for communications with the public and social media, and she routinely speaks at industry events on these topics. Prior to joining FINRA's predecessor (NASD), Ms. Sochard worked with a real estate syndication firm in Washington, DC. She received a bachelor's degree with distinction in English from the University of Virginia and studied poetry writing at Columbia University.

Speakers:

Shayna Beck is the head of Retail Communications for Vanguard in Valley Forge, PA. Prior to holding this position, Ms. Beck was Associate Counsel for Vanguard, where she advised on Vanguard's distribution activities, including advertising compliance and social media practices. Ms. Beck holds a bachelor's degree in actuarial science from Pennsylvania State University and a law degree from Widener University School of Law.

Alexander C. Gavis is Senior Vice President and Deputy General Counsel in the Corporate Legal Department of FMR LLC, the parent company of Fidelity Investments, one of the largest brokerage and mutual fund companies in the United States and the leading provider of workplace retirement savings plans. He manages a team of attorneys and professionals responsible for providing legal services to the firm's retail brokerage, stock plan and workplace retirement businesses. He also oversees and manages legal services for Fidelity's businesses involved in electronic and mobile commerce, start-up innovation, and social media. Mr. Gavis provides legal advice on all of Fidelity's national advertising and marketing initiatives. Prior to joining Fidelity in 1997, Mr. Gavis served as Assistant Counsel at the Investment Company Institute and as Senior Counsel in the Office of General Counsel at the U.S. Securities and Exchange Commission, both in Washington, DC. He also served as a judicial law clerk for The Honorable William T. Allen, Chancellor of the Court of Chancery for the State of Delaware. He has worked in investment banking in New York at Salomon Brothers Inc, handling mergers and acquisitions. Mr. Gavis received his J.D., *cum laude*, from the University of Pennsylvania Law School, where he served as Editor-in-Chief of the *University of Pennsylvania Law Review*, and his bachelor's degree, with High Honors and *Phi Beta Kappa*, from Swarthmore College. As an adjunct professor at Suffolk University Law School, he teaches the class "Designing Thinking for Lawyers and Business Professionals" and has taught at the Stanford University Design and Law Schools and at Harvard Law School. He also holds a patent in the area of blockchain technologies. Mr. Gavis currently serves on FINRA's FinTech Industry Committee and as chair of the Public Communications Committee, and as a past member of the E-Brokerage (chair) and Membership Committees and the Social Media (chair) and New Account Form Task Forces.

Thomas A. Pappas is Vice President of the FINRA Advertising Regulation Department, which regulates the advertisements, sales literature and correspondence used by FINRA member firms. His responsibilities include rule development, management of the filing and surveillance programs and related enforcement activities. He served in the same role at NASD before its 2007 consolidation with NYSE Member Regulation, which resulted in the formation of FINRA. He was previously registered with Davenport & Company LLC. He received a bachelor's degree from The University of Richmond and an MBA from Virginia Commonwealth University.



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Timed Agenda

- I. Introduction
- II. *Regulatory Notice 19-31, Disclosure Innovations in Advertising and Other Communications with the Public*
 - a) Development of the Guidance
 - b) Innovative Design Techniques in Broker Dealer Communications
 - c) Required Disclosures vs. Boilerplate
 - d) Making Disclosures Targeted and Salient
 - e) Integrating Disclosures into the Marketing
 - f) Non-Promotional Communications
- III. Digital Marketing vs. Digital Communications
 - a) Approaches
 - b) Compliance Considerations
 - c) Communications Methods
- IV. Videos and GIFs

- a) Life Cycle of Video Content
 - b) Compliance Considerations
- V. Future Challenges



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Panelists

■ Moderator

- **Amy Sochard, Senior Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Shayna Beck, Head of Advertising and Communications, Vanguard Group, Inc.**
- **Alexander Gavis, Senior Vice President and Deputy General Counsel, Fidelity Investments**
- **Thomas Pappas, Vice President, Advertising Regulation, FINRA Advertising Regulation**

Agenda

- ***Regulatory Notice 19-31, Disclosure Innovations in Advertising and Other Communications with the Public***
- **Digital Marketing Versus Digital Communications**
- **Videos and GIFs**
- **Future Challenges**

Disclosure Innovations

Regulatory Notice 19-31

Regulatory Notice

19-31

Advertising Regulation

Disclosure Innovations in Advertising and Other Communications with the Public

Summary

This Notice responds to questions that FINRA has received from members about how they can comply with FINRA rules when communicating with customers—particularly when using websites, email and other electronic media—while ensuring fair and balanced presentations. Our goal is to facilitate simplified and more effective disclosures in communications with the public.

FINRA welcomes the opportunity to consult with members about expanding their use of alternative and innovative design techniques—such as technology that offers customized information—in their marketing communications to help investors better understand their products and services. We are interested in ways that members can make communications more interesting and informative and how, together, we can improve the effectiveness of disclosures. Items are encouraged to contact the Advertising Regulation Department directly at (240) 386-4500 to discuss these approaches.

Questions concerning this Notice should be directed to:

- Joseph E. Pritz, Senior Vice President, Corporate Financing/Advertising Regulation, at (240) 386-4623 or Joseph.Pritz@finra.org
- Thomas A. Pappas, Vice President, Advertising Regulation, at (240) 386-4523 or Tom.Pappas@finra.org or
- Amy C. Sochard, Senior Director, Advertising Regulation, at (240) 386-4508 or amy.sochard@finra.org



September 19, 2019

Notice Type

► Guidance

Suggested Routing

- Advertising
- Compliance
- Legal
- Marketing
- Operations
- Registered Representatives
- Senior Management

Key Topic(s)

- Advertising
- Communications with the Public
- Digital Communications
- Disclosures
- Marketing
- Social Media
- Supervision

Referenced Rules & Notices

- FINRA Rule 2230
- FINRA Rule 2215
- FINRA Rule 2212
- FINRA Rule 2213
- FINRA Rule 2234
- FINRA Rule 2215
- FINRA Rule 2216
- FINRA Rule 2220
- Regulatory Notice 17-18

1

■ Published September 19, 2019

■ Background

- Work with Stanford Law School
- Public Communications Committee
- Retrospective Rule Review
- Prior FINRA Guidance on Social Media and Digital Communications

■ Contact AdReg to discuss

Regulatory Notice 19-31

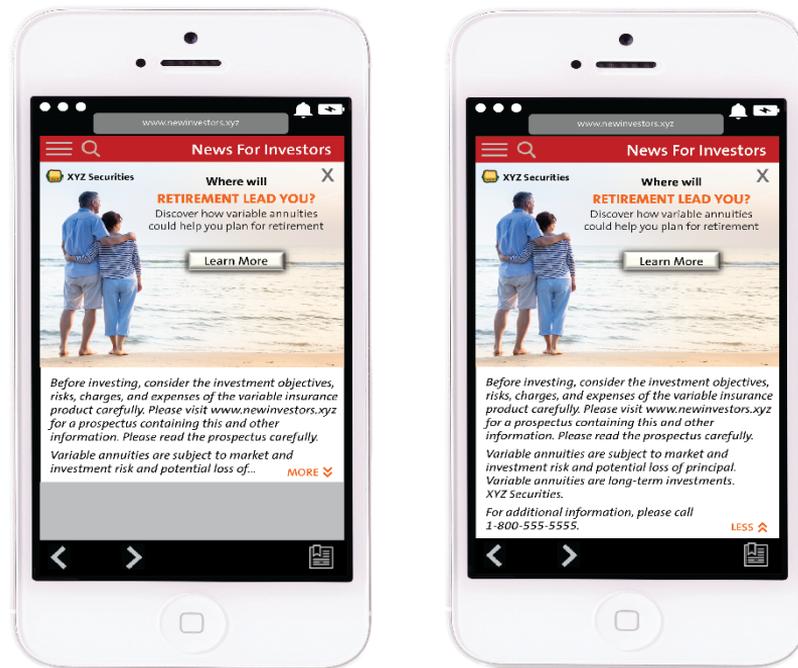
- **Innovative Design Techniques**
- **Precise, Succinct and Relevant Disclosure**
- **Integrated Disclosures vs. Footnotes**
- **Non-Promotional Communications**

Innovative Design Techniques

- **Choice of how to view information**
- **Icons, illustrations, cartoons, animations, videos, pictograms**
- **Emerging technologies**

Example: Using technology to truncate and reveal text

- In this example, the mobile phone version of an advertisement uses technology that permits the viewer to choose whether to view all of the available information by tapping on the words **MORE** or **LESS** to change the display.



Example: Required and additional information combined



Your life. Your dreams.®

ETF Product List

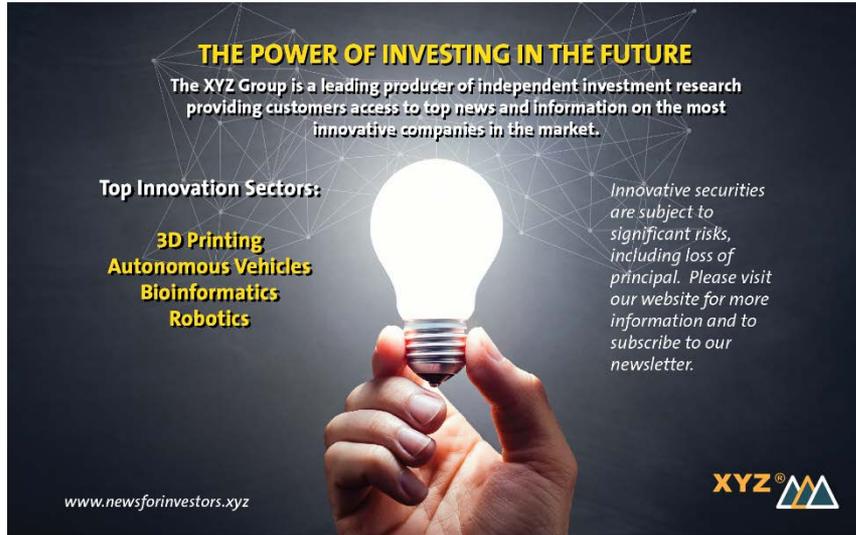
BYF	Benefit PBJ 500® Financials ETF
BYH	Benefit PBJ 500® Health Care ETF
BTM	Benefit PBJ 500® Materials ETF
BYT	Benefit PBJ 500® Technology ETF
BYU	Benefit PBJ 500® Utilities ETF
BHI	Benefit PBJ® High Income Infrastructure ETF

For more information on Benefit's ETF products, please speak to your financial advisor.

Most investors will also incur customary brokerage commissions when buying or selling shares of an ETF. ETF shares may trade below their net asset value ("NAV"). The NAV of shares will fluctuate with changes in the market value of an ETF's holdings. In addition, there can be no assurance that an active trading market for shares will develop or be maintained. As with any investment, you should consider how your investment will be taxed. The tax information contained in the prospectus is provided as general information. Investors should consult their own tax professional about the tax consequences of an investment. "PBJ" and "PBJ 500" are trademarks of PBJ Services LLC ("PBJ") and have been licensed for use by Benefit Distributors, Inc. The funds are not sponsored, endorsed, sold or promoted by PBJ and PBJ makes no representation regarding the advisability of investing in the funds. PBJ does not guarantee the quality, accuracy, and/or the completeness of the index or any data included therein. PBJ makes no warranty, express or implied, as to results to be obtained by licensee, owners of the product, or any other person or entity from the use of the indexes or any data included therein in connection with the rights licensed hereunder or for any other use. PBJ makes no express, or implied warranties, and hereby expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the indexes or any data included therein. Without limiting any of the foregoing, in no event shall PBJ have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages. PBJ determines, composes, and calculates the indexes without regard for the respective products. The products are not sponsored, endorsed, sold, or promoted by PBJ. PBJ has no obligation or liability regarding the administration, marketing, or trading of the products, and make no representation or warranty to the owners of the product, or to any member of the public, regarding investing in securities generally or in the products particularly. **Read a fund's prospectus carefully before investing. It contains the fund's investment objectives, risks, charges, expenses, and other information, which should be considered carefully before investing. Obtain a prospectus and summary prospectus (if available) at www.benefitdistributors.com.**

- Only the highlighted text is required for compliance.
- The other information not required by the rules may detract from the presentation of required information.

Example: Limited Disclosure Appropriate to the Content



THE POWER OF INVESTING IN THE FUTURE

The XYZ Group is a leading producer of independent investment research providing customers access to top news and information on the most innovative companies in the market.

Top Innovation Sectors:

- 3D Printing
- Autonomous Vehicles
- Bioinformatics
- Robotics

Innovative securities are subject to significant risks, including loss of principal. Please visit our website for more information and to subscribe to our newsletter.

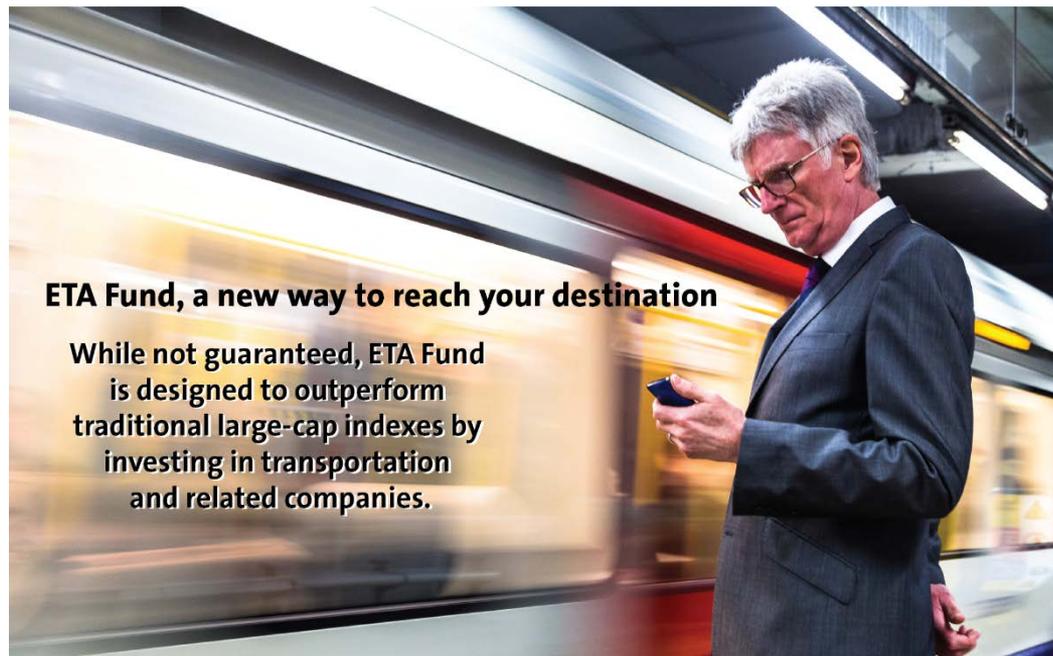
www.newsforinvestors.xyz

XYZ 

- The disclosure: “Innovative securities are subject to significant risks, including loss of principal” is sufficient to the limited marketing message.

Example: Disclosure within the marketing message

- By including the phrase, “While not guaranteed” in the main body of the text, this example illustrates how a short disclosure can be incorporated into the marketing message



ETA Fund, a new way to reach your destination

While not guaranteed, ETA Fund is designed to outperform traditional large-cap indexes by investing in transportation and related companies.

Promotional Communications

- **Communications that promote or offer specific securities, types of securities, or securities services generally require disclosure.**
- **Promotional communications discuss the benefits of a particular product, type of product, or service and, under the rules, require balancing discussions of the risks or drawbacks.**

Non-Promotional Communications

■ May Require Less Disclosure

■ Types of Non-Promotional Communications

- Brand Communications
- Educational Communications
- Reference Resources
- Post-Sale Communications

Digital Marketing vs. Digital Communications

Digital Marketing vs. Digital Communications

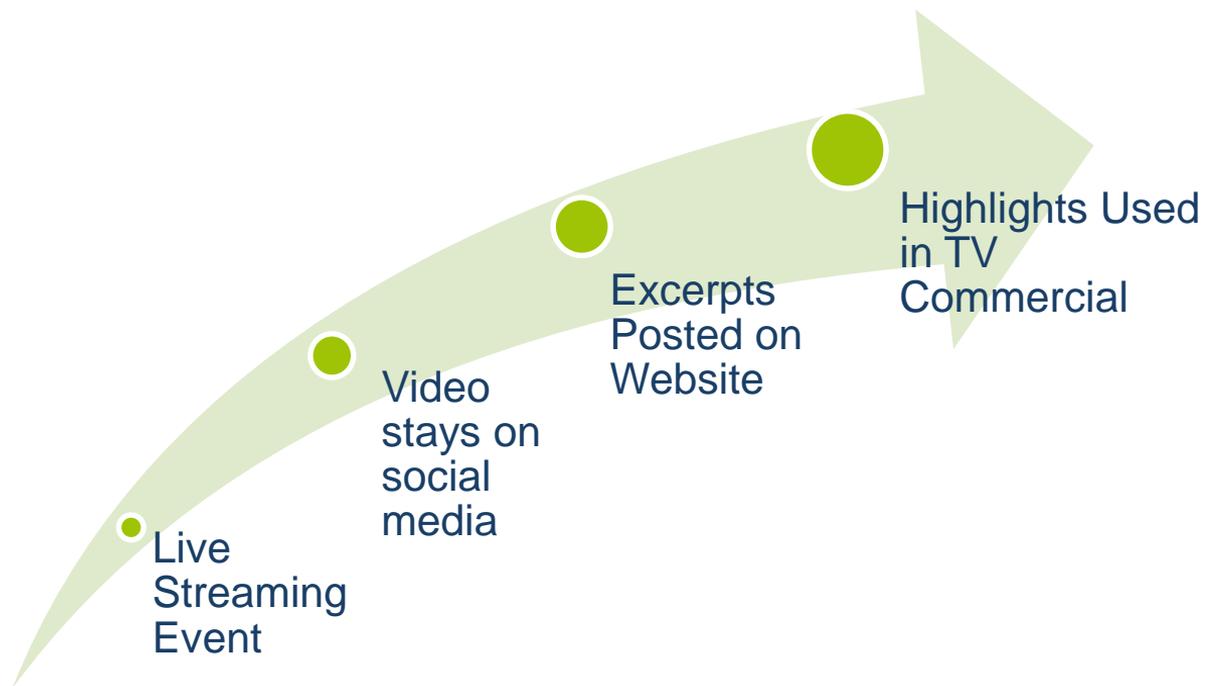
- **Digital Marketing:** the marketing of products or services using digital technologies, channels and tactics such as social media, search engine optimization, influencer advertising, etc.
- **Digital Communications:** electronically transmitted content and materials whether used as part of a digital or conventional marketing strategy.

Some Digital Marketing Compliance Considerations

- **Native Advertising: Clarity, Disclosure**
- **Influencer Advertising: Clarity, Disclosure**
- **Search Optimization or Search Based Advertising: Supervision of Embedded Text**
- **Personalization: Supervision, Records, Reg BI**
- **Internet of Things (IOT): Supervision, Records**

Videos and GIFs

Video Content Lifecycle Example



Looking Ahead: Future Challenges



- Artificial Intelligence
- Machine Learning
- Voice Search
- Conversational Marketing
- Sensors & Geolocation
- Virtual Reality

| Questions and Answers



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Resources

FINRA Resources

- FINRA *Regulatory Notice 19-31, Advertising Regulation, Disclosure Innovations in Advertising and Other Communications with the Public* (September 2019)
www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-31.pdf
- FINRA *Regulatory Notice 17-18, Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications* (April 2017)
www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-18.pdf
- FINRA *Regulatory Notice 11-39, Social Media Websites and the Use of Personal Devices for Business Communications, Guidance on Social Networking Websites and Business Communications* (August 2011)
www.finra.org/sites/default/files/NoticeDocument/p124186.pdf
- FINRA *Regulatory Notice 10-06, Social Media Web Sites, Guidance on Blogs and Social Networking Web Sites* (January 2010)
www.finra.org/sites/default/files/NoticeDocument/p120779.pdf

Securities and Exchange Commission

- *National Exam Program Risk Alert, December 14, 2018: Observations from Investment Adviser Examinations Relating to Electronic Messaging*
www.sec.gov/ocie/announcement/ocie-risk-alert-electronic-messaging
- *National Exam Program Risk Alert, August 7, 2017: Observations From Cybersecurity Examinations*
Website: www.sec.gov/ocie/announcement/observations-cybersecurity-examinations
PDF: www.sec.gov/files/observations-from-cybersecurity-examinations.pdf
- *IM Guidance Update, March 2014, No. 2014-04: Guidance on the Testimonial Rule and Social Media*
www.sec.gov/investment/im-guidance-2014-04.pdf
- SEC Release Nos. 34-58288; IC-28351, *Commission Guidance on the Use of Company Web Sites* (August 7, 2008)
www.sec.gov/rules/interp/interparchive/interparch2008.shtml

- SEC Release No. 34-47806, *Electronic Storage of Broker-Dealer Records* (May 12, 2003)

www.sec.gov/rules/interp/34-47806.htm

Federal Trade Commission (FTC)

- *Native Advertising: A Guide for Business* (December 22, 2015)

www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses

- *Commission Enforcement Policy Statement on Deceptively Formatted Advertisements* (December 22, 2015)

www.ftc.gov/public-statements/2015/12/commission-enforcement-policy-statement-deceptively-formatted