

JULY 1, 2024

FINRA REMINDS MEMBERS OF REGULATORY OBLIGATIONS WHEN USING GENERATIVE ARTIFICIAL INTELLIGENCE (AI) AND LARGE LANGUAGE MODELS

On June 27, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) issued Regulatory Notice 24-09 (the “Notice”)¹ reminding member firms that FINRA’s rules and the securities laws apply to the use of artificial intelligence (“AI”), including large language models (“LLMs”) and other generative AI (“Gen AI”) technology, just as they apply when member firms use any other technology.² The Notice does not create new legal or regulatory requirements or new interpretations of existing requirements, nor does it relieve member firms of existing obligations under federal securities laws and regulations.

FINRA has increasingly focused on the use of AI by member firms and the technology’s impact on firms’ regulatory obligations, including in its 2024 Annual Regulatory Oversight Report where FINRA highlighted AI as an “emerging risk” (see our Legal Update [here](#)). Similarly, there has been strong focus by the U.S. Securities and Exchange Commission (“SEC”) on the use of AI by broker-dealers and investment advisers as reflected by the SEC’s proposed predictive data analytics rules (see our Legal Update [here](#)), which generated significant comment and concern in the industry, and now are expected to be repropose. Also, there has been enforcement focus on the use of, or purported use of, AI technology by broker-dealers (see our article in the International Financial Law Review [here](#)).

FINRA reminds member firms that as they incorporate Gen AI or similar technologies into their businesses, they should be mindful of the implications associated with the use of such technologies and their regulatory compliance obligations.

BACKGROUND

While the use of AI technology by member firms is not new, AI technology has evolved rapidly in recent years, including the development of Gen AI technology, able to generate text, synthetic data, images or other forms of media in response to prompts. LLMs are a type of Gen AI technology that utilize deep learning techniques and large data sets of language to identify, summarize, predict and generate new text-based content. While the potential use cases³ of Gen AI are promising for both investors and

member firms, Gen AI has also brought about concerns regarding accuracy, privacy, bias, intellectual property and possible exploitation by threat actors, among others.⁴

REGULATORY OBLIGATIONS WHEN USING GEN AI TECHNOLOGY

FINRA emphasizes that its rules and guidance are intended to be “technologically neutral” and to work dynamically with evolutions in technology and member firms’ processes. FINRA rules apply when member firms use AI – just like any other technology – in the course of their business, regardless of whether member firms are developing their own Gen AI technology or using technology developed by a third party, including through embedded features in existing third-party products. By way of example, FINRA Rule 3110 (Supervision) requires a member firm to have a reasonably designed supervisory system tailored to its business. A member firm that uses Gen AI for supervision/surveillance, including, for example, for reviewing electronic communications, should have policies and procedures addressing technology governance, including model risk management, data privacy and integrity, reliability and accuracy of the AI model.

Importantly, FINRA reminds member firms to evaluate Gen AI tools before deploying them and ensuring that firms can continue to comply with applicable FINRA rules. According to FINRA, “[d]epending on the ways in which a member firm may use Gen AI, such use could implicate virtually every area of a member firm’s regulatory obligations.”

FINRA will consider issuing further guidance on how particular rules may apply with respect to specific use cases. For example, FINRA recently provided guidance that the content standards of FINRA Rule 2210 (Communications with the Public) apply whether member firms’ communications are generated by humans or technology tools, and such guidance specifically addresses the application of FINRA rules to certain AI-generated communications.⁵

FURTHER CONSIDERATIONS

FINRA encourages member firms to engage with the staff to seek interpretive guidance to the extent they find ambiguity in the application of FINRA rules to a specific use case. Moreover, FINRA encourages member firms to have ongoing discussions with their Risk Monitoring Analysts as AI-related issues or other changes in their business arise. Finally, FINRA will consider providing further guidance or proposing amendments to its rules relating to the use of AI technology as appropriate.



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ENDNOTES

- ¹ [FINRA Regulatory Notice 24-09 \(Artificial Intelligence and Large Language Models\)](#) (Jun. 27, 2024).
- ² FINRA describes “artificial intelligence” as a wide-ranging term that generally means the capability of a machine to imitate intelligent human behavior. This term has been used to refer to a broad spectrum of technologies and applications, such as machine learning, deep learning, neural networks, and natural language processing.
- ³ Some potential use cases discussed in the Notice include: (i) the ability to analyze and synthesize vast sets of financial and market data, summarize large and complex documents, and power educational resources for investors; (ii) the ability for personnel to easily locate and query a member firm’s policies, procedures or forms, to generate summaries derived from the member firm’s research reports, or to obtain issuer-specific information by drawing on SEC filings and earnings call transcripts; and (iii) the ability to leverage Gen AI in surveillance by, for example, generating reports with summaries for the member firm’s compliance personnel of potential evidence of malfeasance, such as market abuse or insider trading.
- ⁴ See also [2024 FINRA Annual Regulatory Oversight Report](#) (January 2024), at 10.
- ⁵ [FINRA Frequently Asked Questions About Advertising Regulation](#) (May 10, 2024) (the “Advertising Regulation FAQs”), at Question B.4 (see our Free Writings & Perspectives blog post [here](#)). The updates to the Advertising Regulation FAQs also serve as a reminder, though unstated, regarding a member firm’s obligations under FINRA rules, including FINRA Rule 2210, when engaging social media influencers (or “finfluencers”) to promote its business—an area of increased enforcement focus/activity (see our Free Writings & Perspectives blog post [here](#)).

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