

MEMO# 31866

July 23, 2019

ICI Draft Comment Letter on FINRA's Proposed Amendments to Rule 2210; Comments Due by July 26

[31866]

July 23, 2019 TO: Accounting/Treasurers Committee

Advertising Compliance Advisory Committee

Broker/Dealer Advisory Committee

Chief Compliance Officer Committee

Closed-End Investment Company Committee

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee

Investment Advisers Committee

Operations Committee

Sales and Marketing Committee

SEC Rules Committee

Small Funds Committee RE: ICI Draft Comment Letter on FINRA's Proposed Amendments to Rule 2210; Comments Due by July 26

Earlier this month, FINRA proposed amendments to Rule 2210 (Communications with the Public)[[1](#)] in response to the Fair Access to Investment Research Act of 2017 ("FAIR Act") and the SEC's related 2018 rulemaking.[[2](#)] The FAIR Act and SEC rules are designed to promote research by unaffiliated broker-dealers on mutual funds, exchange-traded funds, registered closed-end funds, business development companies, and other covered investment funds.[[3](#)]

Comments on the draft ICI comment letter (linked below) are due to ICI (matt.thornton@ici.org) by July 26, COB. Comments are due to the SEC by July 29.

Summary of Proposal and ICI's Draft Comment Letter

While the FAIR Act required FINRA to create a filing exclusion for covered investment fund research reports under FINRA Rule 2210, it also permitted FINRA to require the filing of such reports if their purpose was not to provide research and analysis of covered investment funds. Thus, FINRA could have continued to require broker-dealers to file with FINRA at least a subset of these research reports. However, FINRA's proposal aligns the FINRA filing exclusion with the SEC's definition of "covered investment fund research report." Consequently, if a covered investment fund research report satisfies the

requirements of SEC Rule 139b, it automatically would qualify for the FINRA Rule 2210 filing exclusion.

ICI's draft letter strongly supports the proposal. We believe that FINRA's expansive approach to its filing exclusion will help facilitate broker-dealers' use of this new safe harbor, which we believe could generate useful fund information for investors.

FINRA also has proposed amendments to FINRA Rule 2241, which governs the publication of research reports concerning equity securities and the analysts that produce such research. These proposed amendments would make clear that the Rule's quiet period requirements would not apply to a research report or a public appearance following any offering of the securities of a covered investment fund that is the subject of a covered investment fund research report. ICI also supports these proposed amendments, which we believe remove a potential ambiguity and impediment to broker-dealers' use of the safe harbor.

Matthew Thornton
Assistant General Counsel

[Attachment](#)

endnotes

[1] *Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports)*, SEC Release No. 34-86257, 84 Fed. Reg. 32492 (July 8, 2019)(the "proposal"), available at www.govinfo.gov/content/pkg/FR-2019-07-08/pdf/2019-14402.pdf.

[2] *Covered Investment Fund Research Reports*, SEC Release No. 33-10580 (Nov. 30, 2018), available at www.sec.gov/rules/final/2018/33-10580.pdf. The FAIR Act directed the SEC to amend its rules to extend the current safe harbor available under Rule 139 of the Securities Act of 1933 ("Securities Act") (which does not cover research reports pertaining to all funds) to a "covered investment fund research report." Both Rule 139 and Rule 139b (the new rule that pertains to covered investment fund research reports) include conditions that, if satisfied, provide that a broker-dealer's publication or distribution of a research report about an issuer will be deemed for purposes of Sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security. A broker-dealer's publication or distribution of a research report in reliance on these Rules therefore would not be deemed to constitute an offer that otherwise could be a non-conforming prospectus in violation of Section 5 of the Securities Act.

[3] See Memorandum [No. 31513](#), dated December 4, 2018, for additional background and a summary of the SEC's recent rulemaking.