

MEMO# 23931

November 5, 2009

ICI Draft Comment Letter on FINRA Advertising Proposal; November 12th Conference Call

[23931]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 3-09
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 28-09
SEC RULES COMMITTEE No. 64-09 RE: ICI DRAFT COMMENT LETTER ON FINRA
ADVERTISING PROPOSAL; NOVEMBER 12TH CONFERENCE CALL

The Institute has prepared the attached draft comment letter on a Financial Industry Regulatory Authority ("FINRA") proposal to amend its rules governing member communications with the public. [\[1\]](#) The draft letter commends FINRA for undertaking the initiative to reexamine its rules governing communications with the public. It also has several recommendations that would further improve the effectiveness of, and facilitate members' compliance with, these rules. The draft letter is summarized below.

Comments on the proposal must be filed with FINRA by Friday, November 20th. We will be having a conference call to discuss the draft letter on Thursday, November 12, 2009 at 2:00 EST. If you or someone from your firm would like to participate on the call, please contact Gwen Kelly at gwen.kelly@ici.org for the dial-in information. If you cannot participate on the call, you can email your comments to Dorothy Donohue at ddonohue@ici.org.

The draft letter:

- recommends continuing to exclude all “correspondence,” as that term is currently defined, from principal review and filing requirements;
- recommends requiring filing of press releases “promoting a member’s products or services,” rather than all press releases;
- recommends modifying the requirements regarding press releases to make clear that member firms that merely sponsor a seminar, forum, radio or television interview are not required to comply with certain content standards;
- supports requiring pre-use filing of retail communications related to structured notes;
- supports requiring member firms to file all retail communications concerning closed-end funds within ten business days of first use, including those distributed after the fund’s initial public offering;
- supports excluding from filing retail communications that are based on templates that were previously filed with FINRA, the changes to which are limited to updates of more recent statistical or other non-narrative information;
- recommends permitting funds to provide expense information that is at least as current as that which appears in the fund’s prospectus in retail communications with performance information;
- recommends eliminating the text box requirement for print retail communications with performance information;
- recommends providing a six-month transition period to comply with any new requirements;
- recommends considering a variety of requirements for social media that reflect its dynamic, constantly changing, interactive nature; and
- recommends permitting retail communications that contain information based on non-interactive investment analysis tools.

Dorothy M. Donohue
Senior Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See [Memorandum](#) to Closed-End Investment Company Committee No. 23-09, Advertising Compliance Advisory Committee No. 2-09 and SEC Rules Committee No. 59-09 [Memorandum No. 23836], dated October 1, 2009 (summarizing the proposal).