

MEMO# 30710

May 19, 2017

Draft ICI Comment Letter to FINRA on Proposed Desk Commentary Safe Harbor; Member Comments Requested by Thursday, May 25

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May 19, 2017 TO: Equity Markets Advisory Committee RE: Draft ICI Comment Letter to FINRA on Proposed Desk Commentary Safe Harbor; Member Comments Requested by Thursday, May 25

The Financial Industry Regulatory Authority (FINRA) issued a regulatory notice proposing a limited safe harbor in FINRA rules 2241 (Research Analysts and Research Reports) and 2242 (Debt Research Analysts and Research Reports) for equity and debt desk commentary—written communications from a broker-dealer’s sales and trading personnel that provide information about market conditions for a particular security, issuer, sector, or asset class.^[1]

The Proposal would offer a safe harbor designed to insure that a broker-dealer could continue to provide desk commentary to institutional investors, including regulated funds. Under the proposed safe harbor, a broker-dealer communication that complies with certain conditions, including conditions regarding the author, content, and recipient, would not need to comply with most provisions of FINRA’s rules on research reports.

ICI’s draft comment letter on the Proposal is attached for your review. If you have any comments on the draft letter, please send them to George Gilbert at george.gilbert@ici.org **by close of business on Thursday, May 25.**

Our letter expresses strong support for the Proposal. Section I argues that desk commentary provides valuable information to buy-side traders. The information that buy-side traders receive regarding current market conditions provides a valuable benefit to shareholders overall. Section II analyzes how the broad definitions of “research report” and “debt research report” in FINRA’s rules could make broker-dealers less eager to provide desk commentary to regulated funds and how the Proposal would ameliorate this concern.^[2] We encourage FINRA to work with the broker-dealer community to ensure that the practical solution offered by the safe harbor will grant the compliance certainty that the Proposal aims to provide.

Jennifer S. Choi
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George M. Gilbert
Counsel

[Attachment](#)

endnotes

[1] See Regulatory Notice 17-16 (April 2017), *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-16.pdf (Proposal); ICI Memorandum on Desk Commentary Safe Harbor (Regulatory Notice 17-16) (May 30, 2017).

[2] See FINRA Rules 2241 and 2242 defining “research report” and “debt research report,” respectively.

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