

MEMO# 28597

December 18, 2014

ICI Files Comment Letter in Response to FINRA Request for Comment on a Proposed Pay-to-Play Rule for Members

[28597]

December 18, 2014

TO: SALES FORCE MARKETING COMMITTEE No. 13-14 RE: ICI FILES COMMENT LETTER IN RESPONSE TO FINRA REQUEST FOR COMMENT ON A PROPOSED PAY-TO-PLAY RULE FOR MEMBERS

As we previously informed you, last month FINRA proposed for comment rules to prohibit pay-to-play activities by FINRA members that solicit on behalf of an investment adviser. [\[1\]](#) These rules are intended to track the substance of rules adopted by the U.S. Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB") that prohibit pay-to-play solicitations on behalf of investment advisers or municipal advisers. [\[2\]](#)

In response to FINRA's request for comment, the Institute has filed the attached comment letter that both supports the FINRA proposal but recommends revisions to it. In particular, we recommend that FINRA delete a proposed disclosure requirement (proposed Rule 2271) as well as a disgorgement provision (Rule 2390(b)). With respect to the disclosure requirement, the letter notes that such a requirement will create an unlevel playing field for FINRA members that solicit on behalf of advisers because the pay-to-play rules of the SEC and the MSRB do not include a similar requirement. With respect to FINRA's proposed disgorgement requirement, the letter recommends deletion of this requirement because it is both unnecessary given the existing authority of the SEC and FINRA and it could result in imposing double penalties on those FINRA members that voluntarily disgorge certain compensation. Our concerns with each of these are discussed in detail in the Institute's letter.

Finally, the letter recommends that FINRA confirm that, as applied to an investment adviser to a mutual fund, the rule would only capture those solicitations to a government entity that involve including mutual funds as an option in a retirement plan or college education savings plan offered by the government entity. This clarification is both to ensure that the scope of FINRA's rule is comparable to the SEC's rule and avoid sales of mutual funds by a FINRA member being deemed a solicitation of the advisory services of the fund's investment adviser.

Tamara K. Salmon
Senior Associate Counsel

[Attachment](#)

endnotes

[1] See Institute Memorandum No. [28530](#), dated November 20, 2014, which summarized Political Contributions: FINRA Requests Comment on a Proposal to Establish a “Pay-to-Play” Rule, FINRA Notice 14-50 (November 2014), which is available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p601679.pdf>. A copy of the proposed rule text is available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p601654.pdf>.

[2] FINRA’s adoption of a rule is necessary to enable FINRA members to continue to solicit government entities on behalf of an investment adviser without having to register as a municipal adviser. In the absence of FINRA adopting a rule that is comparable to SEC Rule 206(4)-5, the SEC’s pay-to-play rule would require such registration.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.