

**MEMO# 28141**

May 27, 2014

# **ICI Submits Comment Letter on FINRA's Retrospective Review of Communications with the Public Rules**

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 12-14  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 23-14  
SEC RULES COMMITTEE No. 23-14  
SMALL FUNDS COMMITTEE No. 11-14 RE: ICI SUBMITS COMMENT LETTER ON FINRA'S  
RETROSPECTIVE REVIEW OF COMMUNICATIONS WITH THE PUBLIC RULES

As previously reported, [\[1\]](#) FINRA has announced that it is conducting a retrospective review of several of its communications with the public rules to assess their effectiveness and efficiency. [\[2\]](#) ICI submitted a comment letter on May 23 that offers several comments and recommendations to enhance the effectiveness of the Rules while still respecting their investor protection aims, including the following:

- **Electronic Media.** While FINRA has made considerable progress in addressing members' use of electronic media to disseminate retail communications, the Rules continue to rest fundamentally on principles derived from paper-based communications. We recommend that FINRA reevaluate and revise the Rules to address more effectively the unique nature of electronic communications, without sacrificing important investor protections. More specifically, the letter recommends that FINRA consider ways to: (i) modernize procedural filing requirements to reduce filing and review costs and burdens; and (ii) limit duplicative filing of retail communications that essentially differ in media format only.
- **Investment Analysis Tools.** We recommend that FINRA provide additional clarity with respect to the use of output from investment analysis tools within educational materials. We also urge FINRA to consider taking a more flexible approach with respect to the disclosure requirements of Rule 2214.
- **Streamlining Advertisements.** The letter recommends that FINRA approach the Rules in a manner that recognizes that investors receive and have ready access to

additional sources of information. Considering the Rules and their application in this broader context, we argue that FINRA should permit members and investors to make full use of current technology (e.g., by allowing greater use of hyperlinks to convey appropriate disclosures to investors).

- Consistency and Timeliness in Review Process. While recognizing that FINRA's overall performance in reviewing retail communications is commendable, the letter encourages FINRA to continue to consider ways in which it might improve consistency and timeliness in connection with its reviews.
- Closed-End Funds. As FINRA gains more experience with closed-end fund marketing materials through its review process, we encourage FINRA to consider codifying a set of clear disclosure standards tailored to closed-end fund marketing materials and then eliminating the Rule 2210 filing requirement for these communications.

We will continue to keep you informed as FINRA's retrospective review of the Rules progresses.

Matthew Thornton  
Assistant Counsel

[Attachment](#)

#### **endnotes**

[1] See Institute [Memorandum](#) No. 28027, dated April 10, 2014.

[2] FINRA Notice 14-14, FINRA Requests Comment on the Effectiveness and Efficiency of its Communications With the Public Rules (April 2014) (the "Notice"), available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p479810.pdf>. In the Notice, FINRA specifically seeks comment on FINRA Rule 2210 (Communications with the Public), FINRA Rule 2212 (Use of Investment Company Rankings in Retail Communications), FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), FINRA Rule 2214 (Requirements for Use of Investment Analysis Tools), FINRA Rule 2215 (Communications with the Public Regarding Securities Futures), and FINRA Rule 2216 (Communications with the Public Regarding Collateralized Mortgage Obligations) (collectively, the "Rules").