

MEMO# 24814

December 23, 2010

ICI Files Comment Letter With FINRA On FINRA's Disclosure Document Proposal

[24814]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 64-10
INVESTMENT COMPANY DIRECTORS No. 35-10
OPERATIONS COMMITTEE No. 43-10
SEC RULES COMMITTEE No. 67-10
SMALL FUNDS COMMITTEE No. 34-10
TRANSFER AGENT ADVISORY COMMITTEE No. 87-10 RE: ICI FILES COMMENT LETTER WITH
FINRA ON FINRA'S DISCLOSURE DOCUMENT PROPOSAL

As we previously informed you, [\[*\]](#) in October, FINRA issued a concept release seeking comment on whether to promulgate a new rule that would require FINRA members “at or prior to commencing a business relationship” with a retail customer to provide the customer a disclosure document. This document would include, among other things, information about the broker-dealer’s products and services, compensation arrangements, including incentive compensation, and conflicts of interest. FINRA’s concept release seeks comment on all aspects of such a rule, including who should have a duty to deliver the document, when and how it should be delivered, and what updating requirements should apply to it. The Institute has filed a letter with FINRA supporting its initiative but recommending that, when FINRA drafts its rule, it provides an exclusion or exemption for mutual fund underwriters.

The letter discusses in detail the business of mutual fund underwriters and how that business is significantly different from the business of a retail broker-dealer, as are the regulatory requirements applicable to mutual fund underwriters. As a result, the information contained in the disclosure document for customers of a retail broker-dealer would be largely meaningless to an investor who holds an account with a mutual fund underwriter. Also, however, the delivery requirements contemplated by FINRA are likely to be disruptive to a customer seeking to open an account with a mutual fund underwriter, or result in disruptions to underwriters’ existing processing systems and compliance with regulatory requirements that are unique to their business. The letter, which is attached, discusses each of these issues in detail.

According to the letter, the challenges that would be presented to mutual fund underwriters as a result of the unique nature of their business warrants their exclusion or exemption

from any proposed disclosure requirements. If they are not carved out of FINRA's rule, the letter recommends that, in proposing such rule, FINRA discuss in detail how it would be applied to mutual fund underwriters. In response to the concerns raised by members, the letter is specific to those mutual fund underwriters that hold retail customers' accounts on their records. We seek FINRA's clarification that the proposal would not apply to underwriters that do not hold retail accounts.

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[Attachment \(in .pdf format\)](#)

endnotes

[*] See Institute Memorandum [No. 24675](#), dated October 29, 2010.

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