

MEMO# 28115

May 12, 2014

ICI's Draft Comment Letter On FINRA's Retrospective Review of Communications with the Public Rules; Comments Requested by May 16

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 10-14
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 18-14
SEC RULES COMMITTEE No. 17-14
SMALL FUNDS COMMITTEE No. 8-14 RE: ICI'S DRAFT COMMENT LETTER ON FINRA'S
RETROSPECTIVE REVIEW OF COMMUNICATIONS WITH THE PUBLIC RULES; COMMENTS
REQUESTED BY MAY 16

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. [\[2\]](#) Informed to a large extent by information received from members prior to and at our member call on April 22, the ICI's attached draft comment letter 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, Rule 2210 and its related filing and review processes remain designed and most appropriate for paper-based communications. We recommend that FINRA reevaluate and revise the provisions and processes of Rule 2210 related to the submission and review of retail communications that are made available through electronic media, so as to (i) limit the duplicative filing of content that serves little or no investor protection purpose, and (ii) improve the process by which electronic media is filed and reviewed.
- **Investment Analysis Tools.** We recommend that FINRA provide additional clarity with respect to the use of output from investment analysis tools within educational materials and take a more flexible approach with respect to Rule 2214's disclosure requirements.
- **Streamlining Advertisements.** FINRA should approach the Rules in a manner that

recognizes all additional sources of information that investors receive and have access to, considers the Rules and their application in this broader context, and allows members and investors to make full use of current technology.

- Consistency and Timeliness in Review Process. FINRA should consider ways in which it might improve consistency and timeliness in connection with its reviews of retail communications.

If members have any comment on the draft letter, please contact me at matt.thornton@ici.org or (202) 371-5406 by no later than Friday, May 16 (close of business). The deadline for submitting the comment letter is Friday, May 23.

Matthew Thornton
Assistant Counsel

[Attachment](#)

endnotes

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

[2] FINRA Regulatory Notice 14-14, Retrospective Rule Review (April 2014) (the “Notice”), available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p479810.pdf>. In the Notice, FINRA is specifically seeking 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”).