

MEMO# 29024

May 27, 2015

FINRA Proposes Amendments to Communications with the Public Rules, Issues Additional Questions and Answers on Rules

[29024]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 3-15
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 9-15
CHIEF COMPLIANCE OFFICER COMMITTEE No. 5-15
SEC RULES COMMITTEE No. 12-15
SMALL FUNDS COMMITTEE No. 7-15 RE: FINRA PROPOSES AMENDMENTS TO COMMUNICATIONS WITH THE PUBLIC RULES, ISSUES ADDITIONAL QUESTIONS AND ANSWERS ON RULES

On May 18, FINRA proposed amendments to Rules 2210, 2213, and 2214. [1] Overall, the proposed amendments, if adopted, would have the effect of reducing the scope of filing requirements applicable to retail communications for FINRA members. On May 22, FINRA issued additional questions and answers relating to Rule 2210 as a means of providing additional interpretive guidance to its members. [2]

Comments to the Proposal are due by July 2, 2015. ICI intends to file a comment letter in response to this Proposal. We will be discussing the Proposal and soliciting member feedback during our regularly scheduled Advertising Compliance Advisory Committee call on June 3, 2015 at 2:00 pm (ET). If you are interested in participating, please RSVP to Kimberly Hair at kim.hair@ici.org.

Background

As previously reported, FINRA announced in April 2014 that it was conducting a retrospective review of several of its communications with the public rules to assess their effectiveness and efficiency. [3] ICI submitted a comment letter in May that offered several comments and recommendations to enhance the effectiveness of the Rules while still respecting their investor protection aims, including recommendations related to electric media, investment analysis tools, streamlining advertisements, consistency and timeliness of the review process, and regulation of closed-end funds' advertisements. [4] In

December, FINRA published a Retrospective Rule Review Report (the “Report”), which represented the culmination of the “assessment phase” of the review and summarized its findings. [\[5\]](#)

Summary of the Proposed Amendments

FINRA is proposing a number of amendments to Rules 2210, 2213, and 2214, as summarized below. Generally speaking, the proposed amendments, if adopted, would serve to lessen current filing obligations imposed on FINRA member firms.

- **New Firm Communications:** Currently, new FINRA member firms are required to file with FINRA retail communications used in any electronic or other public media at least 10 business days prior to use. [\[6\]](#) Under the proposed amendments, new firms would be required to file only their websites and material changes to their websites within 10 business days of first use.
- **Investment Company Shareholder Reports:** Currently, FINRA requires firms to file the manager’s discussion of fund performance (MDFP) portion of a registered investment company shareholder report if the report is distributed or made available to prospective investors. Under the proposed amendments, firms would no longer be required to file with FINRA shareholder reports filed with the SEC.
- **Backup Material for Investment Company Performance Rankings and Comparisons:** Currently, firms that file a retail communication for a registered investment company that contains a fund performance ranking or performance comparison must include a copy of the ranking or comparison used in the retail communication. [\[7\]](#) Under the proposed amendments, this filing obligation would be eliminated and replaced with an internal recordkeeping requirement.
- **Generic Investment Company Communications:** Currently, firms must file within 10 business days of first use retail communications “concerning” registered investment companies. [\[8\]](#) Under the proposed amendments, this filing requirement would be narrowed to cover only retail communications “that promote or recommend a specific registered investment company or family of registered investment companies... .” The upshot is that generic investment company communications would be excluded from this filing requirement.
- **Investment Analysis Tools:** [\[9\]](#) Currently, firms that intend to offer an investment analysis tool must file templates for written reports produced by, or retail communications concerning, the tool within 10 business days of first use. [\[10\]](#) Under the proposed amendments, the filing requirement for these templates and related retail communications would be eliminated.
- **Filing Exclusion for Templates:** Currently, firms are not required to file retail communications that are based on templates that were previously filed with FINRA and changed only to update recent statistical or other non-narrative information. [\[11\]](#) Under the proposed amendments, this filing exclusion would be expanded to allow firms to include updated non-predictive narrative descriptions of market events and factual descriptions of portfolio changes without having to refile the template.
- **Bond Mutual Fund Volatility Ratings:** [\[12\]](#) Currently, firms may use bond mutual fund volatility ratings in retail communications, subject to a number of requirements. [\[13\]](#) Under the proposed amendments, some of these requirements would be relaxed. For instance, firms would be permitted to file these communications within 10 business days of first use (rather than prior to use), and the requirement that the rating could only be included in a retail communication that accompanies or is preceded by the bond fund’s prospectus would be eliminated.

Overview of Questions and Answers

FINRA has provided guidance on Rule 2210 in a question and answer format on its website since substantially revising the Rule in 2012. FINRA has added a number of new questions and answers to this webpage, which address topics such as public appearances, non-promotional communications, social media posts, the filing exclusion for non-material changes to previously filed retail communications, article reprints, institutional communications, SEC Rule 482, disclosure of expense reimbursements in mutual fund performance advertising, and business development companies.

Conclusion

As noted above, we will hold a member call to discuss the Proposal on June 3. We will share our draft comment letter with members later in June.

Matthew Thornton
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endnotes

[1] FINRA Regulatory Notice 15-16, FINRA Requests Comment on Proposed Amendments to Rules Governing Communications With the Public (May 2015)(the “Proposal”), available at: www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-16.pdf. As noted in the Proposal, before becoming effective a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934. After a proposed rule change is filed with the SEC, it generally is published for public comment in the Federal Register.

[2] Available at: www.finra.org/industry/finra-rule-2210-questions-and-answers.

[3] See FINRA Regulatory Notice 14-14, FINRA Requests Comment on the Effectiveness and Efficiency of its Communications With the Public Rules (April 2014) (the “Notice”), available at: www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p479810.pdf. In the Notice, FINRA specifically sought 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”). See Institute Memorandum [No. 28027](#), dated April 10, 2014, for a summary of the Notice.

[4] See Institute Memorandum [No. 28141](#), dated May 27, 2014, for a summary and copy of the comment letter. In addition to soliciting written comments, as part of this initiative, FINRA held meetings with interested persons (including ICI) to discuss commenters’ concerns in more detail and conducted an electronic survey relating to issues raised by commenters.

[5] Available at: www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602011.pdf. See Institute Memorandum [No. 28599](#), dated December 19, 2014, for a summary of the

Report. Overall, the Report concluded, “FINRA staff believes that the rules have largely been effective in meeting their intended investor protection objectives. However, the staff believes that the rules and FINRA’s administration of them may benefit from some updating and recalibration to better align the investor protection benefits and the economic impacts.”

[6] Rule 2210(c)(1)(A).

[7] Rule 2210(c)(3)(A).

[8] Id.

[9] Rule 2214 defines an investment analysis tool as “an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.”

[10] Rule 2210(c)(3)(C).

[11] Rule 2210(c)(7)(B).

[12] Rule 2213 defines a bond mutual fund volatility rating as “a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.”

[13] Rule 2213.

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