

MEMO# 25423

August 18, 2011

Update on FINRA Proposal To Require The Issuance of Monthly Account Statements

[25423]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 51-11
TRANSFER AGENT ADVISORY COMMITTEE No. 68-11 RE: UPDATE ON FINRA PROPOSAL TO
REQUIRE THE ISSUANCE OF MONTHLY ACCOUNT STATEMENTS

As you may recall, in May 2009, FINRA proposed a new rule, Rule 2231, relating to customer account statements as part of its ongoing rule consolidation process. [\[1\]](#) As proposed, this rule would have required all general securities members [\[2\]](#) of FINRA to send customer account statements to customers monthly instead of quarterly. Supplementary Material proposed in connection with the new rule would have also prohibited a customer account statement or confirmation being sent to a third-party except pursuant to written instructions from the customer. The Institute filed a comment letter on the proposal expressing our concerns that these new requirements would be very disruptive to existing systems and practices and costly to shareholders. [\[3\]](#) In response to the comments it received, FINRA has revised the proposal and it has been republished by the SEC for comment. [\[4\]](#)

The Revised Version of FINRA Rule 2231

I am pleased to report that, in response to the concerns raised by commenters, FINRA has proposed to revise Rule 2231 to provide a carve out that would cover our members' activities, subject to a condition noted below. In particular, a new paragraph (c)(1) has been added to the rule to permit the sending of quarterly account statements if the member is relying on an appropriate rule, regulation, release, interpretation, no action position or exemption issued by the SEC or its staff that: (1) specifically applies to the fact situation or activity; (2) provides relief from the immediate transaction confirmation delivery requirements of SEC Rule 10b-10; and (3) permits quarterly delivery of customer account statements.; These conditions largely appear to address our concerns and enable mutual

funds to continue to send customer account statements quarterly. In addition, paragraph (c)(2) would permit the use of quarterly account statements for certain listed account activities that include:

- The receipt of funds in the account that are not directly from a purchase or sale transaction;
- The automatic reinvestment of funds in the account pursuant to a customer's standing instructions (e.g., dividend reinvestment plans);
- The transfer of uninvested customer credit balances into or out of money market funds or bank deposits pursuant to a "sweep program;" and
- All fees and charges to the account that have been fully disclosed to the customer and comply with all disclosure and applicable regulatory requirements.

Importantly, each of the exceptions in subsection (c) is conditioned on the customers being provided access to current information on their accounts via the Internet and by telephone.

Supplementary Material .02

In our previous comment letter on the proposal, we also expressed concern with Supplementary Material .01 associated with the rule. This Supplementary Material would prohibit a FINRA member from providing a copy of an account statement, confirmation, or other communication relating to a customer's account to any person other than the customer without the customer's express written instruction to do so. Our letter noted that this provision would impede the legitimate sharing of information that occurs in connection with the processing, servicing and maintaining customer accounts. The letter additionally noted that the privacy protection under the Gramm-Leach-Bliley Act and SEC Regulation S-P, which permit the sharing of such information for certain purposes, should amply protect investors and assuage any FINRA concerns regarding the sharing of this information.

In the current version of FINRA's proposal, this Supplementary Material has been renumbered from .01 to .02 and revised to (1) exclude from its coverage account statements sent to comply with NASD Rule 3050 and NYSE Rule 407 [\[5\]](#) and (2) require a copy of such statements to be sent directly to the customer. In response to the comments of the Institute and others, the Release notes that, due to several concerns (e.g., identity theft, privacy concerns, etc.), FINRA believes firms must be able to document and record customer consent to send customer account statements to third parties.

The Institute's August 2011 Comment Letter

The Institute recently filed the attached comment letter with FINRA on the revised version of Rule 2231 and Supplementary Material .02. With respect to the rule, we recommend that the carve out from the monthly statement requirement not be conditioned upon the investor having access to current account information by phone and internet. With respect to Supplementary Material .02, our letter recommends that written instructions only be required if customer account statements are being sent to third parties that are not registered with the SEC under the Federal securities laws or under state securities law. This change to the Supplementary Material would enable financial professionals to provide account statements to other financial professionals without having to first obtain written customer instructions. As noted in our letter, because such financial professionals are subject to Federal privacy and identity theft protections, this revision should amply address FINRA's concerns without disrupting the manner in which customer accounts are currently

served. A copy of the Institute's August 2011 letter is attached.

We will keep you apprised of developments. FINRA expects, once a final rule is approved by the SEC, to have a sufficiently-long compliance period (up to one year) to enable members to make the necessary changes to their systems.

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[Attachment](#)

endnotes

[1] See Institute Memorandum [23469](#), dated May 20, 2009, which summarized FINRA's proposal.

[2] According to FINRA, a "general securities member" is a member that carries customer accounts and holds customer funds or securities. FINRA members that do not engage in either of these activities is not subject to the rule.

[3] See Institute Memorandum [23521](#), dated June 11, 2009, which summarized the ICI's comment letter.

[4] See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, SEC Release No. 34-64969; File No. SR-FINRA-2009-038, dated July 26, 2011 (the "Release"), which was published at 76 Fed. Reg. 46340 (August 2, 2011).

[5] NASD Rule 3050 and NYSE Rule 405 require a FINRA member carrying an account in which an associated person of another member has an interest to send duplicate confirmation and account statements to such other member.

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