

MEMO# 22986

October 10, 2008

FINRA Proposes To Modify Principal Review Of Market Letters

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 6-08
SEC RULES COMMITTEE No. 71-08
SMALL FUNDS COMMITTEE No. 27-08 RE: FINRA PROPOSES TO MODIFY PRINCIPAL
REVIEW OF MARKET LETTERS

The Securities and Exchange Commission has published for comment proposed amendments to NASD Rule 2210 and 2211 and Incorporated New York Stock Exchange Rule 472 to create an exception from the principal approval requirement for certain market letters. [\[1\]](#) The proposal is summarized below.

Comments on the proposal must be filed with the SEC no later than October 22nd. If you have comments on the proposal that you would like the Institute to consider including in a possible comment letter, please provide them to Dorothy Donohue by phone (202) 218-3563 or email (ddonohue@ici.org) no later than October 15th.

NASD Rule 2210 requires a registered principal of a FINRA member firm to approve all sales literature prior to use. Under the proposal, the definition of sales literature would be amended to exclude market letters [\[2\]](#) that qualify as "correspondence." The proposal would define "correspondence" in NASD Rule 2211 to include market letters distributed by a FINRA member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period.

According to the Release, the proposal would permit FINRA members to distribute market letters without requiring prior approval by a registered principal to: (1) institutional investors; and (2) existing retail customers and fewer than 25 prospective retail customers within a 30 calendar-day period. However, if the market letter both (1) is sent to 25 or more existing retail customers and (2) makes a financial or investment recommendation or

otherwise promotes a member's product or service, prior principal approval would be required.

Dorothy M. Donohue
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endnotes

[1] See Notice of Filing of Proposed Rule Change Relating to the Supervision of Market Letters, SEC Release No. 34-58648 (September 25, 2008), 73 FR 57177 (October 1, 2008) ("Release"). The proposal is available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p117138.pdf>.

[2] Under the proposal, a new definition of "market letter" would be created in NASD Rule 2211 -- and the definition NYSE Rule 472 would be modified -- to mean any communication specifically excepted from the definition of

"research report" under NASD Rule 2711(a)(9)(A) and Incorporated NYSE Rule 472.10(2)(a), respectively. This exception consists of: discussions of broad-based indices; commentaries on economic, political or market conditions; technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price; statistical summaries of multiple companies' financial data, including listings of current ratings; recommendations regarding increasing or decreasing holdings in particular industries or sectors; and notices of ratings or price target changes.