

MEMO# 27412

July 29, 2013

ICI Files Comment Letter with SEC on FINRA's Proposed Consolidated Supervisory Rules

[27412]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 36-13
PRINCIPAL UNDERWRITERS WORKING GROUP RE: ICI FILES COMMENT LETTER WITH SEC ON
FINRA'S PROPOSED CONSOLIDATED SUPERVISORY RULES

As we previously advised you, [\[1\]](#) FINRA recently filed with the SEC a proposal that, among other things, would adopt a new FINRA rule, Rule 3110, that consolidates the supervision rules of the NASD and the NYSE. In response to the SEC's request for comment on the proposal, the Institute today filed the attached comment letter. While the letter is substantively similar to the version previously circulated to members for comment, [\[2\]](#) minor revisions have been made to it in response to members' comments. It is briefly summarized below.

The Institute's comment letter contains an extensive discussion of the activities of mutual fund underwriters and distinguishes the business of such FINRA members from those that operate as full-service broker-dealers. Based on these differences, our letter recommends that FINRA better tailor its regulatory requirements applicable to mutual fund underwriters to the business of such firms. In particular, the letter recommends that FINRA:

- Revise the definition of "branch office" in Rule 3110(e)(2) to exclude mutual fund regional distributors and wholesalers who operate out of their homes but conduct no retail business or have any interaction with retail customers at such location;
- Better tailor the requirements of Rule 3110(c), relating to internal inspections, to the purpose of such inspections and not require an inspection when there is no public purpose to be served by it;
- Revise Rule 3110(b)(2) to eliminate the requirement for principal underwriters to review transactions that do not involve any customer activity; [\[3\]](#)
- Delete or revise Supplementary Material .11 under Rule 3110(b)(6)(C), relating to supervision of supervisory personnel, to enable members, when appropriate, to have a person associated with a mutual fund underwriter supervise a person who

determines the supervisor's compensation or continued employment;

- Revise Rule 3110(b)(4) and its related Supplementary Material .08, relating to review of correspondence and internal communications, to clarify the treatment of internal communications and provide members greater flexibility in their use of electronic review systems or lexicon-based screening tools;
- Revise Rule 3110(d), which would govern transaction review and investigation, to (1) narrow the scope of "covered accounts" that must be identified and monitored; (2) exclude mutual fund underwriting from the definition of "investment banking services," thereby better aligning the rule's prohibitions to instances in which unlawful trading is more likely to occur; and (3) incorporate NYSE guidance into the Rule's Supplementary Material;
- Delete references to the rules of the Municipal Securities Rulemaking Board (MSRB) from Rule 3110(a), relating to supervisory systems, in deference to the MSRB, which pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), is charged with enforcing its own rules; and
- Revise the criteria in Rule 3120, relating to supervisory control systems, that would trigger an additional reporting obligation to better accommodate the business and capital structure of mutual fund underwriters.

Each of these recommendations is discussed in detail in the letter. The Institute appreciates the feedback members provided on the draft letter, particularly in light of the quick turnaround time necessitated by the short comment period.

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[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) No. 27341 (June 28, 2013), which summarizes FINRA's submission to the SEC, SR-FINRA-2013-025, Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules, which is available on FINRA's website at: <http://www.finra.org/Industry/Regulation/RuleFilings/2013/P286230>

[2] See Institute [Memorandum](#) No. 27352 (July 3, 2013), summarizing and seeking comment on the Institute's draft comment letter, which was attached to the memorandum.

[3] This recommendation and its related discussion were added to the letter in response to members' comments on the draft that was circulated.