

**MEMO# 30380**

November 2, 2016

# SEC Approves Amendments to FINRA Communications with the Public Rules

[30380]

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TO: ICI Members SUBJECTS: Advertising

Compliance

Disclosure

Investment Advisers RE: SEC Approves Amendments to FINRA Communications With the Public Rules

The SEC has approved amendments to FINRA Rules 2210, 2213, and 2214.[\[1\]](#) The final amendments are largely in line with those that FINRA proposed earlier this year.[\[2\]](#) The amendments—which ICI strongly supported[\[3\]](#)—will reduce the scope of filing requirements applicable to retail communications for FINRA members.

The effective date for the amendments is January 9, 2017.

## Background

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.[\[4\]](#) ICI submitted a comment letter 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.[\[5\]](#) In December 2014, FINRA published a Retrospective Rule Review Report (the "Report"), which represented the culmination of the "assessment phase" of the review and summarized its findings.[\[6\]](#) FINRA then proposed rule amendments through a May 2015 Regulatory Notice, and ICI submitted a comment letter in response.[\[7\]](#)

## Summary of the Final Amendments

The final amendments to Rules 2210, 2213, and 2214 are summarized below.[\[8\]](#) Generally speaking, the amendments will lessen filing obligations imposed on FINRA member firms.

- **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. The amendments fully exclude from FINRA filing shareholder reports filed with the SEC in compliance with applicable requirements.

- **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. The amendments eliminate this filing obligation and replace it 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.<sup>[9]</sup> The amendments narrow this filing requirement 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 will be excluded from this filing requirement.<sup>[10]</sup>
- **Investment Analysis Tools:**<sup>[11]</sup> Currently, firms that intend to offer investment analysis tools must file templates for written reports produced by, or retail communications concerning, the tools within 10 business days of first use. The amendments eliminate the filing requirement for these templates and related retail communications.
- **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.<sup>[12]</sup> The amendments expand this filing exclusion to include (i) updated non-predictive narrative descriptions of market events and factual changes in portfolio composition, and (ii) changes made to templates that are “sourced from a registered investment company’s regulatory documents filed with the SEC.”<sup>[13]</sup>
- **Bond Mutual Fund Volatility Ratings:**<sup>[14]</sup> Currently, firms may use bond mutual fund volatility ratings in retail communications, subject to a number of requirements.<sup>[15]</sup> The amendments relax these requirements by (i) eliminating the requirement that a fund prospectus accompany or precede a retail communication that includes a rating, (ii) permitting firms to file these communications within 10 business days of first use (rather than prior to use), and (iii) streamlining the content and disclosure requirements.

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#### endnotes

<sup>[1]</sup> Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Amending FINRA Rules 2210 (Communications with the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), and 2214 (Requirements for the Use of Investment Analysis Tools), as Modified by Partial Amendment No. 1, SEC Release No. 34-78823, 81 FR 64240 (Sept. 19, 2016), available at [www.gpo.gov/fdsys/pkg/FR-2016-09-19/pdf/2016-22418.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-09-19/pdf/2016-22418.pdf). See also SEC Approves Amendments to Rules Governing Communications With the Public, FINRA Regulatory Notice

16-41 (October 2016)(the “Notice”), available at [www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-16-41.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-41.pdf).

[2] *Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), and 2214 (Requirements for the Use of Investment Analysis Tools)*, SEC Release No. 34-78026 (June 9, 2016), available at [www.sec.gov/rules/sro/finra/2016/34-78026.pdf](http://www.sec.gov/rules/sro/finra/2016/34-78026.pdf). See [Institute Memorandum No. 29983](#), dated June 16, 2016, for a summary of the proposal. The final amendments reflect one notable change. FINRA initially had proposed relaxing the filing requirement for new FINRA member firms (the current pre-filing requirement would have been replaced with a requirement for these firms to file materials within 10 business days of first use). Subsequently, FINRA withdrew this proposed amendment.

[3] See [Institute Memorandum No. 30016](#), dated July 6, 2016, for a link to and summary of ICI’s comment letter.

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

[5] See [Institute Memorandum No. 28141](#), dated May 27, 2014, for a link to and summary of the ICI 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.

[6] Available at: [www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602011.pdf](http://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.”

[7] *FINRA Requests Comment on Proposed Amendments to Rules Governing Communications With the Public*, FINRA Regulatory Notice 15-16 (May 2015), available at: [www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Note\\_15-16.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-16.pdf). ICI supported the proposed amendments, and recommended several additional enhancements. See [Institute Memorandum No. 29140](#), dated July 2, 2015, for a link to and summary of the ICI comment letter.

[8] Our summary focuses on changes that affect registered investment companies. Another amendment to Rule 2210 clarifies that offering documents concerning securities offerings that are exempt from SEC or state registration requirements are excluded from the FINRA filing requirement, which FINRA calls a non-substantive change.

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

[10] The Notice states, “An example of such a generic communication is a retail communication that describes different mutual fund types (e.g., a description of ‘balanced mutual funds’) but does not discuss the benefits of a specific fund or fund family. This type of material typically is intended to educate the public about investment companies in general or the types of products that a firm offers, and thus does not present the same risks of including potentially misleading information as communications about specific funds or fund families.”

[11] 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.”

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

[13] For example, if a fund revises the description of its investment strategies in its prospectus, it may make corresponding changes to a fund fact sheet without re-filing it with FINRA. This change is consistent with an ICI recommendation. The Notice also states, “This filing exclusion also applies to updates supplied by a third-party data provider, so long as its information comes from SEC filings. However, to the extent that a firm is relying on a third-party data provider to furnish these updates, the firm should obtain assurances from the data provider regarding the quality of the data and its consistency with the SEC source data.”

[14] 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.”

[15] Rule 2213.