

**MEMO# 22087**

January 2, 2008

# **SEC Publishes For Comment FINRA Proposal To Modify Principal Approval Requirement For Certain Sales Material**

[22087]

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TO: SEC RULES COMMITTEE No. 1-08  
SMALL FUNDS COMMITTEE No. 1-08  
ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 1-08  
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 1-08 RE: SEC PUBLISHES  
FOR COMMENT FINRA PROPOSAL TO MODIFY PRINCIPAL APPROVAL REQUIREMENT FOR  
CERTAIN SALES MATERIAL

The Securities and Exchange Commission has published for comment proposed amendments to NASD Rule 2210 to create an exception from the principal approval requirement for certain filed sales material and to modify certain recordkeeping requirements. [\[1\]](#) The proposal is summarized below.

Comments on the proposal must be filed with the SEC no later than January 18th. The Institute will hold a conference call to discuss the proposal and any Institute comments thereon on Wednesday, January 9th at 2:00 p.m. EST. If you plan on participating on the call, please let Lynnette Smith know via email ([lsmith@ici.org](mailto:lsmith@ici.org)) as soon as possible but no later than January 7th. If you are unable to participate on the call but have comments on the proposal, please provide them prior to the call to Dorothy Donohue by phone at (202) 218-3563 or email ([ddonohue@ici.org](mailto:ddonohue@ici.org)). The dial-in number for the call is 888-452-0455 and the pass code is 5309.

## **Principal Review of Sales Literature**

NASD Rule 2210 requires that a registered principal of a FINRA member firm approve, in writing, all advertisements, sales literature, and independently prepared reprints (collectively, “sales material”) prior to use. In addition, advertisements and sales literature regarding mutual funds or variable insurance products must be filed with the FINRA Advertising Regulation Department (“Department”). According to the Release, for funds and variable insurance products that are sold through intermediary firms, a registered principal at the fund’s or variable insurance product’s underwriter typically approves sales material internally and files the material with the Department. FINRA rules require registered principals at each of the intermediary firms that use the underwriter’s sales material to re-approve in writing each of these items used by their firms. Under the proposal, a principal at an intermediary firm would no longer be required to approve the sales material of another firm, if the sales material has been filed with the Department and the Department has issued a review letter finding that the material appears to be consistent with applicable standards. The Release points out that the intermediary firm that relies on this exception could not materially alter or use the sales material in a manner that is inconsistent with any conditions stated in the Department’s review letter. It also points out that the proposed rule change would not preclude intermediary firms from continuing to review sales material.

## **Recordkeeping Requirement**

Rule 2210(b)(2)(A) currently states that firms must maintain a copy of all sales material for a period of three years from the date of last use. According to the Release, existing practice has been to assume that the recordkeeping requirement begins on the date of first use. This position would be codified under the proposal. In addition, the proposal would amend Rule 2210 to require firms relying on the principal approval exception to keep a record of the name of the firm that filed the sales material with the Department and a copy of the related FINRA review letter.

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Senior Associate Counsel

### **endnotes**

[1] See Notice of Filing of Proposed Rule Change To Create Exception to Principal Approval Requirements for Certain Filed Sales Material, SEC Release No. 34-57010 (December 21, 2007), 72 FR 73928 (December 28, 2007) (“Release”). The proposal is available at <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=090000648037f837>.

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