

**MEMO# 30730**

June 5, 2017

## **ICI Files Comment Letter with FINRA on Proposed Desk Commentary Safe Harbor**

[30730]

June 5, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Trading and Markets RE: ICI Files Comment Letter with FINRA on Proposed Desk Commentary Safe Harbor

ICI submitted a comment letter in response to the Financial Industry Regulatory Authority's (FINRA) proposal to create a limited safe harbor in its research report rules for equity and debt desk commentary—written communications from a broker-dealer's sales and trading personnel that provide information about market conditions for a particular security, issuer, sector, or asset class.[\[1\]](#) Under the proposed safe harbor, a broker-dealer communication that complies with certain conditions would not need to comply with most provisions of FINRA's rules on research reports. FINRA believes the safe harbor would insure that a broker-dealer could continue to provide desk commentary to institutional investors, including regulated funds.

Our letter supports FINRA's efforts to provide a practical way to ensure that regulated funds will continue to receive desk commentary. Section I argues that desk commentary provides valuable information to buy-side traders. The information that these traders receive regarding current market conditions provides a valuable benefit to fund shareholders. Section II analyzes how the broad definitions of "research report" and "debt research report" in FINRA's rules could make broker-dealers less eager to provide desk commentary to regulated funds and how the proposal would ameliorate this concern.

The letter recommends one change to the conditions that FINRA proposes to require a broker-dealer to satisfy to use the safe harbor. Specifically, the letter recommends that FINRA not condition use of the safe harbor on receiving negative consent from recipients of desk commentary. Conditioning the receipt of desk commentary on negative consent would, at a minimum, require regulated funds to ensure that broker-dealers do not use the negative consent process for desk commentary to affect other, unrelated unilateral changes in existing relationships. The letter states that the proposed safe harbor should impose no new burdens on desk commentary recipients. Moreover, the letter argues that conditioning use of the safe harbor on negative consent is unnecessary because the health warning that would accompany each piece of desk commentary would provide adequate notification and protections to institutional investors. Accordingly, we suggest that recipient consent not be a condition for using the safe harbor.

Our letter also encourages FINRA to work with the broker-dealer community to ensure that the resolution offered by the safe harbor will grant the compliance certainty that the proposal aims to provide.

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George M. Gilbert  
Counsel

## [Attachment](#)

### **endnotes**

[1] See ICI Memorandum No. 30681 (Apr. 25, 2017), *available at* [https://www.ici.org/my\\_ici/memorandum/memo30681](https://www.ici.org/my_ici/memorandum/memo30681) (summarizing the proposal).

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