

MEMO# 27352

July 3, 2013

ICI Draft Comment Letter on FINRA's Proposed Consolidated Supervisory Rules

[27352]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 31-13
PRINCIPAL UNDERWRITERS WORKING GROUP RE: ICI DRAFT COMMENT LETTER ON FINRA'S PROPOSED CONSOLIDATED SUPERVISORY RULES

As we previously advised you, [\[1\]](#) FINRA has filed with the SEC a proposal to adopt a new FINRA rule that consolidates the supervision rules of the NASD and the NYSE. [\[2\]](#) The proposal has been published for comment on the SEC's website and is expected to be published in the Federal Register in the very near future. Comments will be due to the SEC 21-days following the proposal's publication in the Federal Register. The Institute has prepared the attached draft comment letter, which is briefly summarized below, and which focuses exclusively on the proposal's impact on mutual fund underwriters. Please note that this letter may be our last opportunity to provide feedback on these rules prior to their adoption.

Members with recommended edits to the draft letter or comments regarding the letter should provide them to the undersigned by email (tamara@ici.org) no later than Friday, July 12th. Please note that I am requesting the submission of comments by email because I will be unavailable until Monday, July 15th and we are expecting the letter to be due shortly thereafter. I apologize in advance for any inconvenience and appreciate your accommodation of this request.

Summary of the Institute's Draft Letter

The Institute's letter includes an extensive discussion of the role of mutual fund underwriters and describes how their limited activities differ from those of FINRA members that provide retail brokerage services or engage in investment banking activities. In light of these differences, the letter recommends that various rules in the proposal be revised to accommodate the unique role of mutual fund underwriters. Our letter recommends that FINRA:

- Revise the definition of "branch office" in Rule 3110(e)(2) to accommodate 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;
- 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) 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 (2) 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 to limit the scope of FINRA's authority to its authority under the Securities Exchange Act of 1934 ("Exchange Act"); 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.

Tamara K. Salmon
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[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) No. 27341 (June 28, 2013), which summarizes FINRA's submission to the SEC.

[2] See 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> (the "Proposal").