

MEMO# 29983

June 16, 2016

FINRA Files with SEC Proposed Amendments to Communications with the Public Rules

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 6-16
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 7-16
CHIEF COMPLIANCE OFFICER COMMITTEE No. 9-16
INTERNAL SALES MANAGERS ROUNDTABLE No. 2-16
SALES AND MARKETING COMMITTEE No. 4-16
SEC RULES COMMITTEE No. 26-16
SMALL FUNDS COMMITTEE No. 15-16 RE: FINRA FILES WITH SEC PROPOSED AMENDMENTS TO COMMUNICATIONS WITH THE PUBLIC RULES

FINRA has filed with the SEC proposed amendments to Rules 2210, 2213, and 2214. [\[1\]](#) This Proposal closely tracks the proposed Rule amendments that FINRA issued through a May 2015 Regulatory Notice, [\[2\]](#) with a couple of notable changes. Overall, the proposed amendments, if adopted, would reduce the scope of filing requirements applicable to retail communications for FINRA members.

Comments to the Proposal are due to the SEC by July 6, 2016. ICI intends to file a comment letter supporting this Proposal. We will send a draft of the comment letter to members for review prior to filing it. In the interim, please feel free to reach out to me at matt.thornton@ici.org or (202) 371-5406 with any comments.

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. [\[3\]](#) 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. [\[4\]](#) 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. [\[5\]](#) Finally, as noted above,

FINRA proposed Rule amendments through a May 2015 Regulatory Notice, and ICI submitted a comment letter in response. [\[6\]](#)

Summary of the Proposed Amendments

FINRA is proposing a number of amendments to Rules 2210, 2213, and 2214, as summarized below. Generally speaking, the proposed amendments, if adopted, would serve to lessen current filing obligations imposed on FINRA member firms.

- **New Member Firm Communications:** Currently, new FINRA member firms are required to file with FINRA retail communications used in any electronic or other public media at least 10 business days prior to use. [\[7\]](#) Under the proposed amendments, new firms would be required to file these communications within 10 business days of first use. [\[8\]](#)
- **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. Under the proposed amendments, firms would no longer be required to file with FINRA any portion of shareholder reports filed with the SEC. In response to an ICI comment, FINRA has clarified that members need not file these reports with the SEC prior to or contemporaneously with making the reports available to investors—rather, they need only comply with the SEC filing requirements to use this FINRA filing exclusion. [\[9\]](#)
- **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. [\[10\]](#) Under the proposed amendments, this filing obligation would be eliminated and replaced 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. [\[11\]](#) Under the proposed amendments, this filing requirement would be narrowed 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 would be excluded from this filing requirement.
- **Investment Analysis Tools:** [\[12\]](#) 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. [\[13\]](#) Under the proposed amendments, the filing requirement for these templates and related retail communications would be eliminated.
- **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. [\[14\]](#) Under the proposed amendments, this filing exclusion would be expanded to allow firms to include updated non-predictive narrative descriptions of market events and factual changes in portfolio composition without having to refile the template. And in response to an ICI comment, FINRA is proposing to expand this exclusion even further, to include changes made to templates that are “sourced from a registered investment company’s regulatory documents filed with the SEC.” [\[15\]](#)
- **Bond Mutual Fund Volatility Ratings:** [\[16\]](#) Currently, firms may use bond mutual fund

volatility ratings in retail communications, subject to a number of requirements. [17] Under the proposed amendments, some of these requirements would be relaxed. For instance, firms would be permitted to file these communications within 10 business days of first use (rather than prior to use), and the requirement that the rating could be included only in a retail communication that accompanies or is preceded by the bond fund's prospectus would be eliminated.

Matthew Thornton
Assistant General Counsel

endnotes

[1] 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)(the "Proposal"), available at www.sec.gov/rules/sro/finra/2016/34-78026.pdf.

[2] FINRA Regulatory Notice 15-16, FINRA Requests Comment on Proposed Amendments to Rules Governing Communications With the Public (May 2015), available at: www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-16.pdf. ICI supported the proposed amendments, and recommended several additional enhancements. See Institute [Memorandum](#) No. 29140, dated July 2, 2015, for a summary of and link to the ICI comment letter.

[3] See FINRA Regulatory Notice 14-14, FINRA Requests Comment on the Effectiveness and Efficiency of its Communications With the Public Rules (April 2014) (the "Notice"), available at: www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p479810.pdf. In the Notice, FINRA specifically sought comment on FINRA Rule 2210 (Communications with the Public), FINRA Rule 2212 (Use of Investment Company Rankings in Retail Communications), FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), FINRA Rule 2214 (Requirements for Use of Investment Analysis Tools), FINRA Rule 2215 (Communications with the Public Regarding Securities Futures), and FINRA Rule 2216 (Communications with the Public Regarding Collateralized Mortgage Obligations) (collectively, the "Rules"). See Institute [Memorandum](#) No. 28027, dated April 10, 2014, for a summary of the Notice.

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

[5] Available at: 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.”

[6] See *supra*, note 2.

[7] Rule 2210(c)(1)(A).

[8] FINRA has changed this amended provision. In the May 2015 proposed amendments, FINRA also would have limited new firms’ filing requirements to cover only public websites.

[9] Under Rule 30b2-1(a) under the Investment Company Act of 1940 , funds must file their shareholder reports with the SEC “not later than 10 days after the transmission to stockholders... .” (emphasis added)

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

[11] *Id.*

[12] 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.”

[13] Rule 2210(c)(3)(C).

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

[15] For example, if a fund revises the description of its investment strategies in its prospectus, it could make corresponding changes to a fund fact sheet without re-filing it with FINRA.

[16] 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.”

[17] Rule 2213.