

MEMO# 27199

April 25, 2013

FINRA Issues Interpretive Guidance on the Use of Pre-Inception Index Performance in Institutional Communications

[27199]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 11-13
ETF ADVISORY COMMITTEE No. 21-13
SEC RULES COMMITTEE No. 19-13 RE: FINRA ISSUES INTERPRETIVE GUIDANCE ON THE USE OF PRE-INCEPTION INDEX PERFORMANCE IN INSTITUTIONAL COMMUNICATIONS

On April 22, 2013, FINRA issued an interpretive letter on the use of pre-inception index performance (“PIP”) data in institutional communications. [\[*\]](#) The letter states that FINRA staff believes that FINRA Rule 2210 permits the use of PIP data in institutional communications, as defined in Rule 2210(a)(3), in certain circumstances and subject to certain detailed conditions.

Broadly, the limitations and conditions focus on the types of indices and strategies for which PIP data may be used; the availability of information about the methodology of the index; necessary steps to ensure that marketing material that includes PIP data is provided only to institutional investors; and the presentation of PIP data, including how the data is calculated, the time period reflected, and required accompanying disclosures. In addition to these limitations and conditions, the letter sets forth a number of considerations for firms in determining whether or not to use PIP data.

The letter then reiterates “FINRA’s long standing position that the presentation of hypothetical back tested performance in communications used with retail investors does not comply with FINRA Rule 2210(d).”

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endnotes

[*] The guidance is available at <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P246651>.

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