

MEMO# 23964

November 19, 2009

ICI Comment Letter on FINRA Advertising Proposal

[23964]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 4-09
CLOSED-END INVESTMENT COMPANY MEMBERS No. 52-09
INTERNAL SALES MANAGERS ROUNDTABLE No. 12-09
MARKETING PRACTICES AND TECHNOLOGY
SEC RULES MEMBERS No. 122-09
SALES FORCE MARKETING COMMITTEE No. 11-09 RE: ICI COMMENT LETTER ON FINRA
ADVERTISING PROPOSAL

The Institute has prepared the attached comment letter on a Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to amend its rules governing member communications with the public. [\[1\]](#) The letter commends FINRA for undertaking the initiative to simplify its rules governing communications with the public as it carries out the task of consolidating the NASD and NYSE rulebooks. The letter also contains several recommendations that would further improve the effectiveness of, and facilitate members' compliance with, these rules. The letter is summarized below.

The letter:

- Recommends continuing to exclude all "correspondence," as that term is currently defined, from principal review and filing requirements;
- Recommends not requiring filing of retail communications sent to existing customers that are not promotional in nature;
- Recommends retaining the filing exclusion for press releases that are made available only to members of the media;
- Supports requiring pre-use filing of retail communications related to

structured notes;

- Recommends modifying the requirements regarding public appearances to make clear that member firms that merely sponsor a seminar, forum, or radio or television interview are not required to comply with Rule 2210's content standards;
- Supports requiring member firms to file all retail communications concerning closed-end funds within ten business days of first use, including those distributed after the fund's initial public offering;
- Recommends excluding from principal approval, filing, and recordkeeping retail communications that are based on templates that were previously filed with FINRA, the changes to which are limited to updates of more recent statistical or other non-narrative information;
- Recommends also excluding from principal approval, filing, and recordkeeping any templates that were previously filed with FINRA, the changes to which are limited to non-material changes to narrative and alternative narrative where such narrative was previously filed with FINRA and its use in the template does not alter its meaning from that which was previously filed with FINRA;
- Recommends abandoning the proposed requirements regarding the sources of expense information to be disclosed in retail communications;
- Recommends replacing the text box requirement for print retail communications with performance information with a prominence requirement; and
- Recommends providing a six-month transition period to comply with any new requirements.

The letter also contains several recommendations regarding the appropriate regulation of the use of social media by mutual fund firms, recommends permitting retail communications based on non-interactive investment analysis tools, and urges FINRA to apply a materiality standard with respect to the disclosure required to accompany subsidized yields.

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[Attachment](#)

endnotes

[1] See [Memorandum](#) to Closed-End Investment Company Members No. 42-09, Internal Sales Managers Roundtable No. 10-09, Marketing Practices and Technology, SEC Rules Members No. 103-09 and Sales Force Marketing Committee No. 9-09 [Memorandum No. 23835], dated October 1, 2009; and Memorandum to Advertising Compliance Advisory Committee No. 2-09 [Memorandum No. 23836], dated October 1, 2009 (summarizing the proposal).

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.