

MEMO# 28604

December 22, 2014

FINRA Issues Report on Retrospective Review of Communications with the Public Rules

[28604]

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TO:

INTERNAL SALES MANAGERS ROUNDTABLE No. 12-14
SALES FORCE MARKETING COMMITTEE No. 14-14

RE:

FINRA ISSUES REPORT ON RETROSPECTIVE REVIEW OF COMMUNICATIONS WITH THE PUBLIC RULES

As previously reported, FINRA announced in April that it was conducting a retrospective review of several of its communications with the public rules to assess their effectiveness and efficiency. [\[1\]](#) ICI submitted a comment letter in May 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. [\[2\]](#)

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. All of these activities were conducted during the review's "assessment phase." Earlier this month, FINRA published a Retrospective Rule Review Report (the "Report") that represents the culmination of that phase and summarizes its findings. [\[3\]](#)

Overall, the Report concludes, "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." The Report summarizes feedback received from certain stakeholders and more

broadly through the electronic survey. Based on that feedback, FINRA staff recommends initial consideration of the following areas, where there was general agreement among the various stakeholders:

- aligning the filing requirements and review process with the relative risk of the communications;
- facilitating simplified and more effective risk disclosure;
- providing more guidance regarding application of the content standards, including exploring the adoption of comprehensive performance standards;
- adapting rules and guidance in light of emerging technologies and communications innovation; and
- updating FINRA's electronic filing system.

While the Report does not indicate the specific changes that FINRA staff has in mind as the review transitions into its "action phase," the list above provides a general sense of the staff's direction. The Report notes that actions taken in response to these comments could consist of "a combination of guidance and proposed rule modifications and administrative measures (including systems upgrades) to enhance the effectiveness and efficiency of the rules." It further notes that "FINRA will engage in its usual rulemaking process to propose any amendments to the rules based on the assessment."

We will continue to keep you informed as the "action phase" progresses.

Matthew Thornton
Assistant Counsel

endnotes

[1] 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.

[2] See Institute Memorandum No. [28141](#), dated May 27, 2014, for a summary and copy of the comment letter.

[3] Available at:
www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602011.pdf.

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