

**MEMO# 27988**

March 27, 2014

## **FINRA Proposes Amendments to Rule 2210 (Communications with the Public)**

[27988]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 3-14  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 11-14 RE: FINRA PROPOSES  
AMENDMENTS TO RULE 2210 (COMMUNICATIONS WITH THE PUBLIC)

On March 10, 2014, FINRA filed with the SEC proposed amendments to FINRA Rule 2210 (Communications with the Public), and the SEC has published notice to solicit comments on the proposed changes. [\[1\]](#)

FINRA Rule 2210(c)(7) currently excludes several types of communications from the Rule's filing requirements. FINRA is proposing to add the following as a new type of communication entitled to this exclusion: "Research reports as defined in NASD Rule 2711 that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to Section 24(b) of the Investment Company Act." [\[2\]](#) FINRA believes this new exclusion is appropriate in large part because research reports are already subject to comprehensive disclosure, content, and analyst independence requirements under NASD Rule 2711 and SEC Regulation Analyst Certification (Regulation AC). This new exclusion would cover only research reports concerning exchange-traded securities, and would not cover research reports concerning registered open-end companies, registered UITs, or registered face-amount certificate companies. Research reports that analyze exchange-traded closed-end funds would appear to be entitled to this exclusion.

Second, FINRA is proposing to (i) amend FINRA Rule 2210(c)(7)(F) to clarify that free writing prospectuses [\[3\]](#) exempt from filing with the SEC would be excluded from the Rule's filing requirements, and (ii) amend FINRA Rule 2210(d)(8) to clarify that free writing prospectuses exempt from filing with the SEC would be excluded from the Rule's content standards. Under the Rule's current provisions, prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC are not subject to the Rule's filing requirements and content standards, but investment company prospectuses published pursuant to Securities Act Rule 482 and free writing prospectuses that have been filed with the SEC pursuant to Securities Act Rule 433 are subject to these requirements and standards. These proposed changes are meant to clarify FINRA's intent with respect to free writing prospectuses. Because Securities Act Rule 164(f) does not allow registered

investment companies to make use of free writing prospectuses under Securities Act Rules 164 and 433, these changes would not affect registered funds.

Finally, FINRA is proposing a technical correction to FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) to fix an erroneous cross-reference to a provision in Rule 2210.

In our view, the impact of these FINRA Rule amendments on the fund industry would be minor, and therefore ICI is not inclined to comment. If members disagree, and believe ICI should submit a comment letter, please contact me at [matt.thornton@ici.org](mailto:matt.thornton@ici.org) or 202-371-5406 no later than Tuesday, April 1 and let me know your area(s) of concern.

Matthew Thornton  
Assistant Counsel

**endnotes**

[1] SEC Release No. 34-71792, "Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 2210 (Communications with the Public) and 2214 (Requirements for the Use of Investment Analysis Tools)" (March 25, 2014), available at <http://www.sec.gov/rules/sro/finra/2014/34-71792.pdf>.

[2] Proposed FINRA Rule 2210(c)(7)(O).

[3] Securities Act Rule 405 defines a free writing prospectus as a written communication, including an electronic communication, that constitutes an offer to sell or a solicitation to buy securities in a registered offering by means other than the statutory prospectus.