

MEMO# 24778

December 10, 2010

ICI Draft Letter On FINRA Disclosure Document Proposal; Comments Due Friday, December 17th

[24778]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 62-10
INVESTMENT COMPANY DIRECTORS No. 31-10
OPERATIONS COMMITTEE No. 41-10
SEC RULES COMMITTEE No. 64-10
SMALL FUNDS COMMITTEE No. 29-10
TRANSFER AGENT ADVISORY COMMITTEE No. 84-10 RE: ICI DRAFT LETTER ON FINRA DISCLOSURE DOCUMENT PROPOSAL; COMMENTS DUE FRIDAY, DECEMBER 17TH

As we previously informed you, [\[1\]](#) in October, FINRA issued a concept release seeking comment on whether to pursue a new rule that would require FINRA members “at or prior to commencing a business relationship” with a retail customer to provide the customer a disclosure document. This document would include, among other things, information about the broker-dealer’s products and services, compensation arrangements, including incentive compensation, and conflicts of interest. FINRA’s concept release seeks comment on all aspects of this rule, including who should have a duty to deliver the document, when and how it should be delivered, and what updating requirements should apply to it.

The Institute has prepared a draft comment letter on the proposal, which is attached and briefly summarized below. Persons with comments on the draft should provide them to the undersigned no later than the close of business on Friday, December 17th. Comments may be provided by phone (202-326-5825) or email (tamara@ici.org).

Summary of the Institute's Draft Letter

The Institute's letter expresses support for FINRA undertaking rulemaking to require broker-dealers to provide retail customers a disclosure document at or prior to commencing a business relationship with the customer. It also commends FINRA for making its proposal product neutral, unlike other disclosure documents that have been proposed in the past and that would have only applied to mutual fund sales. The letter discusses in detail the impact the proposal would have on mutual fund underwriters and recommends that such underwriters, whose business consists solely of distributing mutual fund shares, be excluded or exempt from having to provide the document. To the extent FINRA does not provide an exclusion or exemption for underwriters, the letter recommends that FINRA permit them to satisfy delivery of the document by providing it, or information regarding its availability, to the customer at the time a new account is confirmed.

The letter also recommends that FINRA permit broker-dealers to post the document on their website and refer investors to the website to obtain the information. For those investors who would prefer a hard copy of the document, we recommend that FINRA preserve the ability of investors to request delivery of a paper document. With respect to the issue of updating, the letter recommends that the document be updated any time there is a material change in its information that would impact an investor who received a previous version of the document. Where there has been no such material change, we recommend, consistent with the Brochure Rule under the Investment Advisers Act of 1940, that broker-dealers be required, no less frequently than annually, to either provide a current copy of the document, advise its customers of the availability of the document on the broker-dealer's website, or inform the investor how it may obtain a hard copy of the document.

Tamara K. Salmon
Senior Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See Institute [Memorandum](#) No. 24675, dated October 29, 2010.

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