

MEMO# 34839

January 30, 2023

2023 Report on FINRA's Examination and Risk Monitoring Program

[34839]

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TO: ICI Members
Investment Company Directors
ESG Advisory Group
ESG Fund Disclosure Working Group
ESG Task Force SUBJECTS: Advertising
Disclosure
ESG RE: 2023 Report on FINRA's Examination and Risk Monitoring Program

The Financial Industry Regulatory Authority ("FINRA") recently issued its 2023 Report on FINRA's Examination and Risk Monitoring Program.[\[1\]](#) The report addresses, among other topics, member firms' communications promoting ESG factors. It describes findings from recent oversight activities of FINRA's Member Supervision, Market Regulation and Enforcement programs with respect to member firms' communications promoting ESG factors. It then identifies effective practices that FINRA observed through its oversight activities with respect to member firms' communications promoting ESG factors.[\[2\]](#)

Communications Promoting ESG Factors

In a section titled "Findings and Effective Practices," the report notes the following findings from recent oversight activities of FINRA's Member Supervision, Market Regulation and Enforcement programs with respect to member firms' communications promoting ESG factors:

- using fund communications that contain claims that are inconsistent with or unsupported by the fund's offering documents'; and
- including rankings, ratings, or awards that lack a sound basis or are unwarranted or misleading based on the criteria used or factors considered.

The report then identifies the following as effective practices that FINRA observed through its oversight activities with respect to member firms' communications promoting ESG factors:

Implementing and maintaining reasonably designed procedures for communications promoting ESG factors, including:

- reviewing communications to ensure that ESG-related claims are consistent with and supported by applicable offering documents;
- balancing statements promoting ESG factors by prominently describing the risks associated with ESG funds, including that:
 - ESG-related strategies may not result in favorable investment performance;
 - there is no guarantee that the fund's ESG-related strategy will be successful; and
 - the fund may forego favorable market opportunities in order to adhere to ESG-related strategies or mandates.

Joshua Weinberg
Associate General Counsel, Securities Regulation

Notes

[1] 2023 Report on FINRA's Examination and Risk Monitoring Program, available at <https://www.finra.org/sites/default/files/2023-01/2023-report-finras-examination-risk-monitoring-program.pdf>

[2] In a section titled "Communications with the Public," the report poses several questions that mirror the findings and effective practices.

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