

COMMENT LETTER

October 9, 2009

ICI Files Comment Letter on FINRA Proposal to Require Settlement Dates on Confirmations

October 9, 2009 Elizabeth M. Murphy, Secretary U.S. Securities and Exchange Commission 100 F Street, NE Washington, DC 20549-1090 Re: FINRA's Proposed Rule 2232, Customer Confirmations; File No. SR-FINRA-2009-058 Dear Ms. Murphy: The Commission recently published for comment FINRA proposed Rule 2232, which would govern the contents of customer confirmations. The Investment Company Institute¹ is writing to strongly recommend that FINRA exclude certain mutual fund confirmations from the rule's proposed requirement to include a settlement date on each confirmation. As discussed in more detail below, we recommend this exclusion because, for the confirmations we recommend be excluded, there would be no public purpose served by disclosing the settlement date and the burdens imposed by such a requirement may be significant. According to FINRA's submission to the SEC in connection with this initiative, proposed Rule 2232 is yet another step in FINRA's continuing project to consolidate the rules of the NASD and NYSE. We have supported FINRA's efforts to consolidate these rules, and we largely support proposed Rule 2232 because it will provide greater uniformity between FINRA's confirmation requirements and those of the Commission under Rule 10b-10. However, there is one significant difference between FINRA's Rule 2232 and the SEC's Rule 10b-10 - FINRA's rule would require all members to include on their 10b-10 confirmations the settlement date of the transaction being confirmed. The new rule arrives at this new requirement by merging the requirements of the NASD's current rule governing confirmations, Rule 2230, which does not require including the settlement date, with the NYSE's confirmation rule, Rule 409(f), which does require its inclusion. As such proposed Rule 2232 would ¹The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$11.2 trillion and serve over 93 million shareholders. Ms. Elizabeth M. Murphy, Secretary October 9, 2009 Page 2 of 3 require that the settlement date be included on the confirmation for "any transaction in any security effected for or with an account of a customer." This would be a new requirement for NASD members. To our knowledge, settlement dates are relevant to purchasers of securities when there is a difference between the trade date and the settlement date. This is because, when such a difference exists, the purchaser does not truly own the security until the transaction settles, which could be from one to three days after the trade date (i.e., T+1 or T+3) depending upon the transaction. The ownership of the security during this interim

period between trade date and settlement date may be significant for a variety of reasons, including for purposes of dividend payments, since it determines who owned securities on the record date. Accordingly, we can understand the importance of disclosing settlement dates when there is a difference between the trade date and the settlement date. When mutual funds are sold by retail broker-dealers, those trades are forwarded on to the mutual fund or its transfer agent for processing. In such instances, the time needed to process the trade may result in the settlement date of the trade being a date other than the trade date. We understand that, in such instances, FINRA's members are disclosing the settlement date on the confirmation they provide to customers. By contrast, however, when trades are effected directly with a mutual fund's underwriter without reliance on a retail broker-dealer, there is no difference between the trade date and the settlement date – they are the same date. As such, there would be no purpose served by requiring the settlement date to be disclosed on the confirmations issued for such transactions. Because there would be no purpose served by including this information, and because it is not required under Rule 10b-10, it is, and has long been, standard industry practice not to include the settlement date on the confirmation on trades that are not effected through a retail broker-dealer. We note that, while Rule 10b-10 requires broker-dealers to provide customers with meaningful information regarding their transactions, it does not require inclusion of the settlement date. Requiring the inclusion of the settlement date on a confirmation would impose unnecessary and costly burdens on FINRA's members that, as a fund's underwriter, effect mutual fund transactions without reliance on a retail broker-dealer. This is because the automated systems currently used to process and effect such transactions and the systems used to produce and distribute confirmations would all need to be reconfigured and redesigned to ensure that, in addition to disclosing the trade date, the confirmations also disclose the same date as the settlement date. 2 Relevant to mutual fund investors are (1) the date of the investor's transaction and (2) the price paid or received for fund shares involved in the transaction. The Federal securities laws already ensure that investors are provided this information. In particular, Rule 10b-10 requires disclosure by a broker-dealer of "the date of [the] transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; [and] the total number of shares of such securities in such customer's account." This information must be provided by the broker-dealer either in connection with each individual transaction or, for transactions effected through a periodic plan or investment company plan, within five days after the end of each quarterly period. Ms. Elizabeth M. Murphy, Secretary October 9, 2009 Page 3 of 3 In our view, when the trade date and the settlement date are the same date, no purpose would be served by requiring the confirmation to separately disclose the settlement date. Accordingly, the Institute strongly recommends that FINRA either: (1) revise proposed Rule 2232 to relieve members from having to disclose the settlement date of any transaction in which the settlement date is the same as the trade date; or (2) interpret the settlement date requirement of the proposed rule to be satisfied if the confirmation includes the trade date and the trade date and the settlement date are the same date. In such instances, FINRA should clarify that the settlement date need not be separately disclosed or referred to. The Institute appreciates having the opportunity to provide these comments on FINRA's proposed rule. If you have any questions concerning them, please do not hesitate to contact the undersigned at 202-326-5825. Sincerely, /s/ Tamara K. Salmon Tamara K. Salmon Senior Associate Counsel

should not be considered a substitute for, legal advice.