

## COMMENT LETTER

July 29, 2019

# ICI Submits Comment Letter on FINRA's Proposed Amendments to Rule 2210 (pdf)

July 29, 2019 Mr. Eduardo A. Aleman Deputy Secretary Securities and Exchange Commission 100 F Street, NE Washington, D.C. 20549 Re: File Number SR-FINRA-2019-017

Dear Mr. Aleman: The Investment Company Institute<sup>1</sup> strongly supports FINRA's proposed amendments to FINRA Rule 2210 (Communications with the Public).<sup>2</sup> We applaud FINRA's streamlined and straightforward rulemaking approach and encourage prompt adoption of the Rule 2210 amendments as proposed. FINRA's proposal follows from the Fair Access to Investment Research Act of 2017 ("FAIR Act") and the SEC's related rulemaking.<sup>3</sup> The FAIR Act and SEC rulemaking are designed to promote

1 The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$22.4 trillion in the United States, serving more than 100 million US shareholders, and US\$6.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

2 Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports), SEC Release No. 34-86257, 84 Fed. Reg. 32492 (July 8, 2019)(the "proposal"), available at [www.govinfo.gov/content/pkg/FR-2019-07-08/pdf/2019-14402.pdf](http://www.govinfo.gov/content/pkg/FR-2019-07-08/pdf/2019-14402.pdf).

3 Covered Investment Fund Research Reports, SEC Release No. 33-10580 (Nov. 30, 2018), available at [www.sec.gov/rules/final/2018/33-10580.pdf](http://www.sec.gov/rules/final/2018/33-10580.pdf). The FAIR Act directed the SEC to amend its rules to extend the current safe harbor available under Rule 139 of the Securities Act of 1933 ("Securities Act") (which does not cover research reports pertaining to all funds) to a "covered investment fund research report." Both Rule 139 and Rule 139b (the new rule that pertains to covered investment fund research reports) include conditions that, if satisfied, provide that a broker-dealer's publication or distribution of a research report about an issuer will be deemed for purposes of Sections 2(a)(10) and 5(c) of the Securities Act of 1933 to be research by unaffiliated broker-dealers on mutual funds, ETFs, registered closed-end funds, business development companies, and other covered investment funds. While the Act requires FINRA to create a filing exclusion for covered investment fund research reports, it also permits FINRA to require the filing of such reports if their purpose was not to provide research and analysis of covered investment funds. We strongly support FINRA's proposal, which aligns the FINRA filing exclusion with the SEC's definition of

“covered investment fund research report.” As stated in the proposing release, “The SEC has determined which research reports should be subject to the safe harbor, and FINRA sees no policy reason to create a filing exclusion for covered investment fund research reports that differs from this standard.”<sup>4</sup> We agree. This approach would benefit investors, funds, and broker-dealers. It would ensure that a broker-dealer producing such a research report need only conduct one legal analysis to comply with both the SEC and FINRA Rules. In sum, FINRA’s streamlined amendments would help facilitate broker-dealers’ use of this new safe harbor, which we believe could generate useful fund information for investors.<sup>5</sup> ■ ■ ■ ■ the Securities Act not to constitute an offer for sale or offer to sell a security. A broker-dealer’s publication or distribution of a research report in reliance on these Rules therefore would not be deemed to constitute an offer that otherwise could be a non-conforming prospectus in violation of Section 5 of the Securities Act. 4 Proposal at 32495. 5 We also support the proposed amendments to FINRA Rule 2241, which governs the publication of research reports concerning equity securities and the analysts that produce such research. These proposed amendments would make clear that the Rule’s quiet period requirements would not apply to a research report or a public appearance following any offering of the securities of a covered investment fund that is the subject of a covered investment fund research report. We believe this removes a potential ambiguity and impediment to broker-dealers’ use of the safe harbor. Eduardo A. Aleman July 29, 2019 Page 3 If you have any questions, please contact me at (202) 218-3563 or Matthew Thornton at (202) 371-5406. Sincerely, /s/ Dorothy Donohue Deputy General Counsel cc: Thomas Selman, Executive Vice President, FINRA Thomas Pappas, Vice President and Director of Advertising Regulation, FINRA Joseph Savage, Vice President and Counsel—Regulatory Policy, FINRA Amy Sochard, Senior Director, Advertising Regulation, FINRA