# Communications with the Public 7.00

## Introduction

In accordance with FINRA rules governing communications with the public, broker/dealer firms are required to employ both general and specific standards of compliance when engaging in communications with the public. The following is an overview of some of the internal policies and procedures as they specifically apply to *Rule 2210*, *2211* and various interpretative materials including definitions, explanations, and overall standards for conducting communications with the public.

## 7.01 Key Definitions

### Reorganization of Rules

Effective February 4, 2013, new FINRA Rule 2210 encompasses, subject to certain changes, the provisions of former NASD Rules 2210 and 2211, NASD Interpretive Materials 2210-1 and 2210-4, and the provisions of Incorporated NYSE Rule 472 that do not pertain to research analysts and research reports. Each of the other Interpretive Materials that follow former NASD Rule 2210, except IM-2210-2 (Communications with the Public About Variable Life Insurance and Variable Annuities), have been assigned separate FINRA rule numbers and adopt the same communication categories used in FINRA Rule 2210.

### Communication Categories

The rule change reduces the number of current communication categories from six to three, as follows:

- **Institutional communication** includes written (including electronic) communications that are distributed or made available only to institutional investors, but does not include a firm's internal communications. "Institutional investor" generally has the same definition as under former NASD Rule 2211(a)(3).

  *Under FINRA Rule 2210(a)(3), communications that currently qualify as "institutional sales material" generally fall within the definition of "institutional communication"—written (including electronic) communications that are distributed or made available only to institutional investors. However, FINRA is excluding from the definition of "institutional communication" a firm's internal communications. In the past, FINRA has applied FINRA's rules governing communications with the public to a firm's internal communications.*

- **Retail communication** includes any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. "Retail investor" includes any person other than an institutional investor, regardless of whether the person has an account with the firm.

  *Firms should note, however, that sales scripts intended for use with retail customers are considered retail communications rather than internal communications. The current definition of "sales literature" in FINRA Rule 2210 specifically includes telemarketing scripts, and under FINRA Rule 2210, the term "retail communication" includes telemarketing and other sales scripts used with more than 25 retail investors within a 30 calendar-day period.*

- **Correspondence** includes any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

  *As revised, FINRA Rule 2210(a)(2) defines "correspondence" as "any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period." Thus, the current distinction between existing retail*

*customers and prospective retail customers is eliminated. Instead, if a firm distributes or makes available a written communication to 25 or fewer retail investors within a 30 calendar-day period, the communication is considered correspondence. If a firm distributes or makes available a written (including electronic) communication to more than 25 retail investors (even if they are existing retail customers) within a 30 calendar-day period, it is considered a retail communication.*

*Under new FINRA Rule 2210, it covers any type of written communication. Thus, for example, a seminar handout provided to 25 or fewer retail investors within a 30 calendar-day period would be considered correspondence under the new definition.*

*Under new FINRA Rule 2210, if a firm distributes a written communication that falls within the definition of "market letter" to more than 25 retail investors within a 30-calendar day period, the market letter will be considered a retail communication rather than correspondence.*

*Consolidated statements, i.e., prepared documents that consolidate some or all of a customer's financial assets and securities holdings custodied at more than one location, also constitute correspondence for purposes of FINRA Rule 2210(a)(2).*

Communications that currently qualify as advertisements and sales literature generally fall under the definition of "retail communication." In addition, to the extent that a firm distributes or makes available a communication that currently qualifies as an independently prepared reprint to more than 25 retail investors within a 30 calendar-day period, the communication also falls under the definition of "retail communication."

**"Reason to Believe" Standard**

The definition of "institutional investor" under FINRA Rule 2210(a)(4) specifies that "no member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail. The "reason to believe" standard does not impose an affirmative obligation on firms to inquire whether an institutional communication will be forwarded to retail investors every time such a communication is distributed investor." Firms should have policies and procedures in place reasonably designed to prevent institutional communications from being forwarded to retail investors, and make appropriate efforts to implement such policies and procedures. Such procedures may include the use of legends warning the recipient of an institutional communication that it is for institutional investor use only. (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

## 7.02 Content Standards

**Standards Applicable to All Communications with the Public**

**General Content Standards**

- The Firm's communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading; FINRA Rule 2210(d)(1)(A) incorporates the same standards without change;
- The Firm shall refrain from making any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. The Firm may not publish, circulate or distribute any public communication that it knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading; FINRA Rule 2210(d)(1)(B) incorporates the same standards as NASD Rule 2210(d)(1)(B) without change, other than expressly prohibiting promissory statements or claims. FINRA staff already interprets NASD Rule 2210(d)(1)(B) to

prohibit promissory language in member communications, and Incorporated NYSE Rule 472(i) specifically prohibits promissory statements;

- Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication; FINRA Rule 2210(d)(1)(C) incorporates the standards of NASD Rule 2210(d)(1)(C) without change.

**Predictions and Projections of Performance**

- Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

  FINRA Rule 2210(d)(1)(F) carries forward the current prohibition of performance predictions and projections, as well as the allowance for hypothetical illustrations of mathematical principles. The rule also clarifies that FINRA allows two additional types of projections of performance in communications with the public that are not reflected in the text of NASD Rule 2210(d)(1)(D). First, FINRA allows projections of performance in reports produced by investment analyst tools that meet the requirements of NASD IM-2210-6. Second, FINRA has permitted research reports on debt or equity securities to include price targets under certain circumstances.

  Accordingly, FINRA Rule 2210(d)(1)(F) clarifies that it does not prohibit an investment analysis tool, or a written report produced by such a tool, that meets the requirements of FINRA Rule 2214. FINRA Rule 2210(d)(1)(F) also clarifies that it does not prohibit a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

**Comparisons and Disclosure of a Firm's Name**

- NASD Rule 2210(d)(2)(B) requires any comparison in advertisements and sales literature between investments or services to disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return and tax features. FINRA Rule 2210(d)(2) incorporates these standards for retail communications without substantive change.

  NASD Rule 2210(d)(2)(C) requires all advertisements and sales literature to (i) prominently disclose the name of the firm; (ii) reflect any relationship between the firm and any non-member or individual who is also named in the communication; and (iii) if the communication includes other names, reflect which products and services are offered by the firm. FINRA Rule 2210(d)(3) applies these standards to correspondence as well as to retail communications. Firms are permitted to use the name under which it conducts its broker-dealer business as disclosed on the firm's Form BD, as well as a name by which a firm is commonly recognized or which is required by any state or jurisdiction.

**Tax Considerations**

- NASD IM-2210-1(5) specifies that in advertisements and sales literature, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes, and provides an example of income from an investment company investing in municipal bonds that is free from federal income tax but subject to state or local income taxes. FINRA Rule 2210(d)(4)(A) carries forward this rule for all retail communications and correspondence.

NASD IM-2210-1(4) prohibits communications with the public from characterizing income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption. FINRA Rule 2210(d)(4)(B) carries forward this prohibition for all communications.

FINRA Rule 2210(d)(4)(C) adds new language concerning comparative illustrations of the mathematical principles of tax-deferred versus taxable compounding. The illustration:

- must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum;
- must use and identify actual federal income tax rates;
- is permitted (but not required) to reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state;
- if it is intended for a target audience, must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income; must reflect the impact of taxes during any specific investment payout period identified in the illustration;
- may not assume an unreasonable period of tax deferral; and
- must include the following disclosures, as applicable:
- the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;
- the possible effects of investment losses on the relative advantage of the taxable versus tax-deferred investments;
- the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;
- the fact that ordinary income tax rates will apply to withdrawals from a tax deferred investment;
- its underlying assumptions;
- the potential impact resulting from federal or state tax penalties (*e.g.*, for early withdrawals or use on non-qualified expenses); and
- that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

By placing this rule language in FINRA Rule 2210, FINRA is clarifying that these standards apply to any illustration of tax-deferred versus taxable compounding, regardless of whether it appears in a communication promoting variable insurance products or some other communication, such as one discussing the benefits of investing through a 401(k) retirement plan or individual retirement account.

**Disclosure of Fees, Expenses and Standardized Performance**

- NASD Rule 2210(d)(3) currently requires communications with the public, other than institutional sales material and public appearances, that present the performance of a non-money market mutual fund, to disclose the fund's maximum sales charge and operating expense ratio as set forth in the fund's current prospectus fee table. FINRA Rule 2210(d)(5) maintains this standard for retail communications and correspondence.

**Testimonials**

- NASD Rule 2210(d)(1)(E) currently provides that, if any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. FINRA Rule 2210(d)(6)(A) carries forward this standard for communications.

NASD Rule 2210(d)(2)(A) requires any advertisement or sales literature that includes a testimonial concerning the investment advice or investment performance of a firm or its products to prominently disclose the fact that:

- the testimonial may not be representative of the experience of other customers;
- the testimonial is no guarantee of future performance or success; and
- if more than a nominal sum is paid, it is a paid testimonial. FINRA Rule 2210(d)(6)(B) carries forward these disclosure requirements for retail communications and correspondence, and requires disclosure regarding payment if more than $100 in value (rather than a "nominal sum") is paid for the testimonial.

**Recommendations**

- FINRA Rule 2210(d)(7) revises in several ways the standards currently found in NASD IM-2210-1(6) applicable to communications that contain a recommendation. NASD IM-2210-1(6)(A) requires disclosure of certain specified conflicts of interest to the extent applicable. These disclosures include if the firm:

  - was making a market in the recommended securities, or the underlying security if the recommended security is an option or security future, or that the member or associated person will sell to or buy from customers on a principal basis;
  - (and/or its officers or partners have a financial interest in the securities of the recommended issuer and the nature of the financial interest, unless the extent of the financial interest is nominal; and
  - was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended in the past 12 months.

  FINRA Rule 2210(d)(7)(A) retains the first and third disclosure requirements, but modifies the second disclosure requirement. As revised, a retail communication that includes a recommendation of securities must disclose, if applicable, that the firm or any associated person directly and materially involved in the preparation of the content has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest, unless the extent of the financial interest is nominal.

  NASD IM-2210-1(6)(B) requires a firm to provide, or offer to furnish upon request, available investment information supporting the recommendation, and if the recommendation is for an equity security, to provide the price at the time the recommendation is made. FINRA Rule 2210(d)(7)(B) carries forward these requirements without change.

  FINRA Rule 2210(d)(7)(C) amends the provisions governing communications that include past recommendations, which are currently found in NASD IM-2210-1(6)(C) and (D) and Incorporated NYSE Rule 472(j)(2). The new standards mirror those found in Rule 206(4)-1(a)(2) under the Investment Advisers Act of 1940, which apply to investment adviser advertisements that contain past recommendations. FINRA Rule 2210(d)(7)(C), like Rule 206(4)-1(a)(2), generally prohibits retail communications from referring to past specific recommendations of the firm that were or would have been profitable to any person. The rule allows, however, a retail communication or correspondence to set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the firm within the immediately preceding period of not less than one year. The list must provide certain information regarding each recommended security and include a prescribed cautionary legend warning investors not to assume that future recommendations will be profitable.

**Prospectuses Filed With the SEC**

- FINRA Rule 2210(d)(8) provides that prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC are not subject to the content standards of FINRA Rule 2210(d).

**Public Appearances**

- Currently, a "public appearance" is defined as "participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity." Public appearances are a separate category of communications within the broader term "communications with the public." As such, public appearances must meet the same standards that apply to all communications with the public, such as the requirements that they be fair and balanced and not include false or misleading statements. However, public appearances are not subject the principal pre-use approval requirements of NASD Rule 2210(b)(1)(A), nor must a firm file a public appearance with FINRA.

  If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

  - that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest, unless the extent of the financial interest is nominal; and
  - any other actual, material conflict of interest of the associated person or firm of which the associated person knows or has reason to know at the time of the public appearance

  Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of FINRA Rule 2210.

**Use of Investment Company Rankings in Retail Communications**

- FINRA Rule 2212 replaces NASD IM-2210-3 with regard to standards applicable to the use of investment company rankings in communications. The standards generally remain the same. FINRA has revised the standards applicable to investment company rankings for more than one class of an investment company with the same portfolio. Such rankings also must be accompanied by prominent disclosure of the fact that the investment companies or classes have different expense structures. FINRA Rule 2212 adds a new paragraph (h) that excludes from the rule's coverage reprints or excerpts of articles or reports that are excluded from filing requirements pursuant to FINRA Rule 2210(c)(7)(I). (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

**Requirements for the Use of Bond Mutual Fund Volatility Ratings**

- FINRA Rule 2213 replaces NASD IM-2210-5 with regard to standards applicable to the use of bond mutual fund volatility ratings in communications. The standards remain the same as in NASD IM-2210-5. (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

**Standards Applicable to Investment Analysis Tools**

- Pursuant to IM-2210-6, a Firm may offer an investment analysis tool (whether customers use the Firm's investment analysis tool independently or with assistance from the Firm), written reports indicating the results generated by such tool and related sales material only if the Firm:

  - Describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions.
  - Explains that results may vary with each use and over time.

- Describes, if applicable, the universe of investments considered in the analysis; explains how the tool determines which securities to select; discloses if the tool favors certain securities and, if so, explains the reason for the selectivity; and states that other investments not considered may have characteristics similar or superior to those being analyzed.
- Displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

FINRA Rule 2214 replaces NASD IM-2210-6 with regard to standards applicable to the use of investment analysis tools. The standards generally remain the same with some minor changes. Currently NASD IM-2210-6 requires a firm that offers or intends to offer an investment analysis tool, within 10 days of first use, to provide the Advertising Regulation Department access to the tool and file with the department any template for written reports produced by, or advertisements and sales literature concerning, the tool. FINRA Rule 2214(a) requires firms to provide the department with access to the tool and to file any template for written reports produced by, or any retail communication concerning, the tool within 10 *business* days of first use. This revision makes the access and filing requirement time frame consistent with other filing requirements under FINRA Rule 2210(c). (Ref. Regulatory Notice 12-29; June 2012) ►►

**Implementation Strategy**

In the event that the Firm will offer any investment analysis tools, the designated supervisor will ensure that the Firm provides the required disclosures and ensures that the approved literature is submitted at least 10 business days prior to first use and provides the Advertising Department access to the investment analysis tool along with any applicable templates. The Firm will also promptly notify the Advertising Department of any changes that have been made since initial filing promptly.

*NOTE: The Firm does not presently provide any investment analysis tools.*

**Guidelines for Communications With the Public Regarding Security Futures**

- FINRA Rule 2215 replaces NASD IM-2210-7 with regard to standards applicable to communications concerning security futures. FINRA Rule 2215 would revise the current standards in several respects.

  Portions of NASD IM-2210-7 apply only to advertisements. FINRA Rule 2215 applies these provisions to all retail communications.

  NASD IM-2210-7(a)(1) requires firms to submit all advertisements concerning security futures to FINRA at least 10 days prior to use. FINRA Rule 2215(a)(1) requires firms to submit all retail communications concerning security futures to FINRA at least 10 business days prior to first use. Both the current and the new filing provisions require a firm to withhold the communication from publication or circulation until any changes specified by the Advertising Regulation Department have been made.

  FINRA Rule 2215 amends the provisions that require communications concerning security futures to be accompanied or preceded by the security futures risk disclosure document under certain circumstances. As revised, a communication concerning security futures must be accompanied or preceded by the risk disclosure document if it contains the names of specific securities. FINRA Rule 2215(b)(4)(D) clarifies that communications that contain the historical performance of security futures must disclose all relevant costs, which must be reflected in the performance. (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

**Communications With the Public About Collateralized Mortgage Obligations**

- FINRA Rule 2216 replaces NASD IM-2210-8 with regard to standards applicable to retail communications concerning collateralized mortgage obligations. The standards remain the same as in NASD IM-2210-8. (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

**Free Writing Prospectuses**

FINRA Regulatory Notice 10-52 on Free Writing Prospectuses issued October 2010 addresses the application of NASD Rules 2210 and 2211 to free writing prospectuses distributed by broker-dealers in a manner reasonably designed to lead to their broad unrestricted dissemination, as described in Securities Act Rule 433. 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. The free writing prospectus was introduced as part of the SEC's Securities Offering Reform and was intended to provide issuers with greater flexibility in the use of communications during the registered offering process. A free writing prospectus may include information that is not included in the registration statement, but it may not conflict with information in the filed registration statement, including any prospectus and any Securities Exchange Act reports incorporated by reference.

A free writing prospectus must contain a legend advising investors that:

- the issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which the communication relates;
- before investing, the investor should read the prospectus and other documents filed by the issuer; and
- copies of these documents can be obtained for free through the SEC's website or from the issuer or any underwriter or dealer participating in the offering.

Securities Act Rule 433requires any offering participant other than the issuer to file any free writing prospectus that is distributed by or on behalf of the offering participant in a manner reasonably designed to lead to its broad unrestricted dissemination.

**Scope of "Broad Unrestricted Dissemination"**

The SEC has provided guidance concerning the meaning of the term "broad unrestricted dissemination" and FINRA explicitly incorporates that guidance. Specifically, the SEC has noted that examples of broad unrestricted dissemination of a free writing prospectus by a broker-dealer would include posting such prospectus on an unrestricted website or releasing it to the media. Conversely, the SEC has stated that a broker/dealer does not make a broad unrestricted dissemination if a free writing prospectus is posted to a restricted website or sent directly to its customers, regardless of the number of customers. (Ref. Notice 10-52; issued October 2010).

**SEC Approves Amendments to Rules Governing Communications With the Public**

- Investment Company Shareholder Reports-- the amended rule excludes from the filing requirements annual or semi-annual reports that have been filed with the SEC in compliance with applicable requirements. The amendment is consistent with other filing exclusions already in the rule, including prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC

- Offering Documents Concerning Unregistered Securities-- Rule 2210(c)(7)(F) currently excludes from filing "prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state, or that is exempt from such

registration …" (emphasis supplied). FINRA has always intended for this provision to exclude issuer-prepared offering documents concerning securities offerings that are exempt from registration. Amended Rule 2210(c)(7)(F) makes this intent more clear. As revised, Rule 2210(c)(7) (F) excludes from filing, among other things, "similar offering documents concerning securities offerings that are exempt from SEC or state registration requirements." While the amendment clarifies this filing exclusion, it does not represent a substantive change to the current exclusion from filing under Rule 2210 for unregistered securities' offering documents.

- Backup Material for Investment Company Performance Rankings and Comparisons-- Current rules require a firm that files a retail communication for a registered investment company that contains a fund performance ranking or performance comparison to include a copy of the ranking or comparison used in the retail communication. When FINRA adopted this requirement, prior to the internet, FINRA staff did not have ready access to the sources of rankings or comparisons. Today, this information typically is easily available online. The amended rules therefore eliminate the requirement to file ranking and comparison backup material and instead expressly require firms to maintain back-up materials as part of their records.

- Generic Investment Company Communications-- FINRA Rule 2210(c)(3)(A) requires firms to file within 10 business days of first use retail communications "concerning" registered investment companies. The amended filing requirement covers only retail communications that promote a specific registered investment company or family of registered investment companies. Thus, the amended rule no longer requires firms to file generic investment company retail communications. An example of such a generic communication is a retail communication that describes different mutual fund types (e.g., a description of "balanced mutual funds") but does not discuss the benefits of a specific fund or fund family. This type of material typically is intended to educate the public about investment companies in general or the types of products that a firm offers, and thus does not present the same risks of including potentially misleading information as communications about specific funds or fund families.

- Investment Analysis Tools-- "Investment analysis tools" are interactive technological tools that produce simulations and statistical analyses that present the likelihood of various investment outcomes if particular investments are made or particular investment strategies or styles are undertaken. Pursuant to FINRA Rules 2210(c)(3)(C) and 2214(a), firms that intend to offer an investment analysis tool must file templates for written reports produced by, or retail communications concerning, the tool, within 10 business days of first use. Rule 2214 also requires firms to provide FINRA with access to the tool itself, and provide customers with specific disclosures when firms communicate about the tool, use the tool or provide written reports generated by the tool. Since Rule 2214 became effective in 2005, FINRA has found that firms have largely complied with the rule's requirements applicable to templates for written reports produced by investment analysis tools and retail communications concerning such tools. Given this history and in light of the investor protection afforded by other content standards and the requirement that firms provide access to the tools and their output upon request of FINRA staff, the amended Rule 2214 eliminates the filing requirements for investment analysis tool report templates and retail communications concerning such tools and instead requires firms to provide FINRA staff with access to investment analysis tools upon request.

- Filing Exclusion for Templates-- Currently, firms are not required to file retail communications that are based on templates that were previously filed with FINRA but changed only to update recent statistical or other non-narrative information. However, firms are required to refile previously filed retail communications that are subject to filing under FINRA Rule 2210(c) to the extent that the firm has updated any narrative information contained in the prior filing. Often these refiled retail communications are templates for fact sheets concerning particular funds or products and provide quarterly information concerning a product's performance, portfolio holdings and investment objectives. Through its review of updated fund fact sheets and other similar templates, FINRA has found that certain narrative information has not presented significant risk to investors, and

that these narrative updates typically are consistent with applicable standards. In particular, narrative updates that are not predictive in nature and merely describe market events that occurred during the period covered by the communication, or that merely describe changes in a fund's portfolio, rarely have presented significant investor risks. In addition, firms often will update narrative information concerning a registered investment company, such as a description of a fund's investment objectives, based on information that comes from the fund's regulatory documents filed with the SEC. Accordingly, the amended rule expands the template filing exclusion also to allow firms to include updated non-predictive narrative descriptions of market events during the period covered by the communication and factual descriptions of portfolio changes without having to refile the template, as well as updated information that comes from a registered investment company's regulatory documents filed with the SEC.

- Bond Mutual Fund Volatility Ratings-- FINRA Rule 2213 permits firms to use communications that include ratings provided by independent third parties that address the sensitivity of the net asset value of an open-end management investment company's bond portfolio to changes in market conditions and the general economy, subject to a number of requirements. For example, these communications must be accompanied or preceded by the bond fund's prospectus and contain specific disclosures. Firms currently must file retail communications that include bond mutual fund volatility ratings at least 10 business days prior to first use, and withhold them from publication or circulation until any changes specified by FINRA have been made. Despite the potential value to investors, FINRA has found that, since Rule 2213 first became effective in 2000, firms have rarely, if ever, filed communications that contain bond fund volatility ratings. In general, in the few cases in which firms filed such communications with FINRA, the staff has found that they have met applicable standards. Amended Rule 2213 modifies the requirements to use bond fund volatility ratings while maintaining investor protections. Consistent with the filing requirements for other retail communications about specific registered investment companies, firms are no longer required to accompany or precede a retail communication that includes a bond fund volatility rating with a prospectus for the fund. Firms also may file these communications within 10 business days of first use rather than prior to use. (Regulatory Notice 16-41; Effective Date January 9, 2017)

## 7.03 Guidelines for Avoiding Misleading Communications with the Public

The Firm is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform to the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.

- Members must ensure that statements are not misleading within the context in which they are made. A statement made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balanced treatment of risks and potential benefits. Member communications should be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.
- Members must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.

- Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. A complex or overly technical explanation may be more confusing than too little information.
- In communications with the public, income or investment returns may not be characterized as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.
- In advertisements and sales literature, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.
- Recommendations
    - In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:
        - that at the time the advertisement or sales literature was published, the member was making a market in the securities being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;
        - that the member and/or its officers or partners have a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal;
        - that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the past 12 months.
    - The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.
    - A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.
    - Also permitted is material that does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (C). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

## 7.04 Filing Requirements and Review Procedures

**General Filing Requirements (First-Time Filers)**

In accordance with FINRA Rule 2210(c)(1)(A), for a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

**Requirement to File Certain Retail Communications Prior to First Use**

In accordance with FINRA Rule 2210(c)(2)(A)-(B), at least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to: (i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and (ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

**Requirement to File Certain Retail Communications**

In accordance with FINRA Rule 2210(c)(3)(A)-(D), within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2).

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(D) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs FINRA Rule 2210(c)(1), (c)(2) or subparagraphs (A) through (C) of paragraph (c)(3).

**Changes to FINRA Rules Required by the FAIR Act**

FINRA has made two changes to its rules required by the FAIR Act and Securities Act Rule 139b. First, FINRA amended Rule 2210 to create a filing exclusion for covered investment fund research reports that qualify for the Securities Act Rule 139b safe harbor. Second, FINRA amended Rule 2241 to eliminate the quiet period restrictions on publishing a research report or making a public appearance concerning a covered investment fund that is the subject of such a report.

*Elimination of Filing Requirement*

Section 24(b) of the ICA requires registered open-end management investment companies, registered unit investment trusts (UITs), registered face amount certificate companies (FACCs), and their underwriters to file sales material for the funds with the SEC within 10 days of first use. ICA Rule 24b-3 provides that any sales material shall be deemed filed with the SEC for purposes of section 24(b) upon filing with a registered national securities association that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

Virtually all principal underwriters of mutual funds, exchange-traded funds (ETFs), UITs and FACCs satisfy the section 24(b) requirement by filing their sales material with FINRA. Rule 2210 requires members to file within 10 business days of first use or publication of retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, ETFs, variable insurance products, closed-end funds (CEFs) and UITs). The requirement also includes retail communications that concern public direct participation programs such as a BDC and any other registered security that is derived from or based on a single security, basket of securities, index, commodity, debt issuance or foreign currency.

FINRA has created a new filing exclusion under Rule 2210 for "any covered investment fund research report that is deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act, not to constitute an offer for sale or offer to sell a security under Securities Act Rule 139b." Rule 2210 defines "covered investment fund research report" as having the same meaning given that term in paragraph (c)(3) of Securities Act Rule 139b. Thus, if a firm publishes or distributes a research report concerning an unaffiliated registered investment fund (and the fund, the fund's adviser, and their affiliates were not involved with the preparation or approval of the report), the firm will not be required to file it with FINRA, provided that the report qualifies for the Rule 139b safe harbor.

*Affiliate Research Reports*

The FAIR Act and Securities Act Rule 139b define "covered investment fund research report" to exclude a research report to the extent that the report is published or distributed by the covered investment fund, any affiliate of the covered investment fund, or any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund. Thus, research reports published or distributed by a covered investment fund, its affiliate or any broker-dealer that is an investment adviser (or an affiliate of the investment adviser) for the covered investment fund will still have to be filed under ICA section 24(b) and FINRA Rule 2210.

As the SEC noted in the Release, one factor to consider in evaluating whether a research report has been published or distributed by a person covered by the affiliate exclusion from the definition of covered investment fund research report is the extent of such person's involvement in the preparation of the research report. These determinations would be based on the extent to which a person covered by the affiliate exclusion, or any person acting on its behalf, has been involved in preparing the information or explicitly or implicitly endorsed or approved the information. The SEC refers to such affiliate involvement or endorsement as "the entanglement and adoption theory, respectively."

Thus, FINRA does not consider research reports on covered investment funds to be excluded from filing under Rule 2210 if personnel of the covered investment fund, any affiliate of the fund, or any broker-dealer that is the investment adviser or an affiliated person of the investment adviser were entangled with the preparation of the report, or had adopted its contents after it had been prepared. For example, if a third-party distributor publishes or distributes research concerning a fund that was written by personnel of the fund's investment adviser, the report still would be subject to filing under Rule 2210.

*FINRA Equity Research Rules*

FINRA Rule 2241 governs the publication of research reports concerning equity securities and the analysts that produce such research. Under Rule 2241, members must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts. Among other things, these policies and procedures must define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, related to the issuer (quiet periods).

These quiet periods restrict a member that has participated as an underwriter or dealer in an initial public offering (IPO) from publishing research or having its research analysts make public appearances for a minimum of 10 days following the date of an IPO. They also restrict a member that has acted as a manager or co-manager of a secondary offering from publishing research or having its research analysts make personal appearances for a minimum of three days following the date of the offering.

While Rule 2241 excludes from its definition of "research report" communications related to mutual funds, the rule applies to communications that meet the definition of "research report" under Rule 2241 concerning other covered investment funds, including CEFs, ETFs, BDCs, UITs and commodity or currency funds, to the extent such research reports are published by an underwriter or dealer in the IPO or manager or co-manager of a secondary offering. Prior to this rule change, such research reports (as defined under Rule 2241) on covered investment funds (other than mutual funds) were subject to Rule 2241's quiet periods.

Accordingly, FINRA amended Rule 2241 to add a new exception from the rule's quiet period requirements for the publication or distribution of research reports and research analysts' public appearances if the member has participated in the offering of the subject company's securities. Under this new exception, the quiet period requirements shall 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. Although not required by the FAIR Act or SEC rules, FINRA also eliminated quiet periods for public appearances concerning a covered investment fund to further advance the policy objectives of the FAIR Act. (Regulatory Notice 19-32; Publication Date September 26, 2019)

**Concurrent With Use Filing Requirements**

NASD Rule 2210(c)(2) requires a firm to file within 10 business days of first use or publication:

- advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts) that do not include bond fund volatility ratings;
- advertisements and sales literature concerning public direct participation programs, as defined in FINRA Rule 2310 (formerly NASD Rule 2810);
- advertisements concerning government securities; and
- any template for written reports produced by, or advertisements and sales literature concerning, an investment analysis tool, as such term is defined in IM-2210-6.

FINRA Rule 2210(c)(3) requires that all retail communications concerning closed end registered investment companies be filed with FINRA. Currently NASD Rule 2210 requires firms to file within 10 business days of first use advertisements and sales literature concerning closed-end funds that are distributed during the fund's initial public offering (IPO) period, as well as all advertisements and sales literature concerning continuously offered (interval) closed-end funds.The new filing requirement also applies to retail communications that are distributed after a closed-end fund's IPO period.

Consistent with current requirements, FINRA Rules require firms to file within 10 business days of first use:

- Templates for written reports produced by, or retail communications concerning, an investment analysis tool, as it is defined in FINRA Rule 2214;
- CMOs that are registered under the Securities Act of 1933.
- all retail communications concerning any security that is registered under the Securities Act of 1933 and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency e.g. (publicly offered structured or derivative products, such as exchange-traded notes or registered grantor trusts). (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

**Date of First Use and Approval**

With each filing, the Firm shall provide the actual or anticipated date of first use, the name and title of the registered principal who approved the advertisement or sales literature and the date the approval was given.

**Television and Video Advertisements**

If the Firm has filed a draft version or "story board" of a television or video advertisement pursuant to a filing requirement, then it also must file the final filmed version within 10 business days of first use or broadcast.

**Press Releases**

Rule 2210(c)(8)(G) excludes from the filing requirements press releases that are made available only to members of the media.

**Legends and Footnotes**

FINRA Rule 2210(d)(1)(C) provides that information may be placed in a legend or footnote only when such placement would not inhibit an investor's understanding of the communication. Thus, for example, footnotes in especially small type in an advertisement might be deemed to inhibit an investor's understanding of the advertisement. Similarly, an advertisement that presents bold claims that are supposedly "balanced" only with footnote disclosure might not comply with this content standard.

**Use and Disclosure of a Member Firm's Name**

FINRA Rule 2210(d)(2)(C) simplifies the current provisions concerning disclosure of member names by deleting many of the current specific provisions governing the use of member names. In addition, FINRA Rules 2210(d)(2)(C) and 2211(d)(2) make clear that the requirement to disclose the member's name applies to advertisements, sales literature, correspondence, business cards, and letterhead.

**Limitations on Use of FINRA's Name**

Broker/dealers may indicate FINRA membership in conformity with Article XV, Section 2 of FINRA By-Laws in the following ways:

- in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that FINRA or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;
- in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with FINRA Uniform Practice Code."

Upon request to FINRA, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of FINRA and must be returned by the member upon request of FINRA Board or its Chief Executive Officer.

**FINRA Website References ("Hyperlink Requirement")**

On July 30, 2007, NASD changed its name to FINRA and changed its Internet domain from www.nasd.com to www.finra.org. On September 17, 2007, FINRA submitted proposed rule change SR-FINRA-2007-14 to amend IM-2210-4 to reflect the new corporate identity.

The amendments to IM-2210-4 replace references to NASD with FINRA. Thus, member firms, or persons associated with a member firm, that refer to their FINRA membership on a website must provide a hyperlink to www.finra.org, instead of www.nasd.com.

As previously referenced in Notice to Members 07-02, firms are not required to refer to their FINRA membership on their websites. The hyperlink requirement applies only to the extent that a member firm or a person associated with a member firm chooses to represent on a website that the firm is a member of FINRA.

A hyperlink to www.finra.org must be located in close proximity to any reference reasonably designed to draw the public's attention to FINRA membership. Since only one hyperlink to www.finra.org is required, member firms have the flexibility to place the hyperlink in close proximity to any FINRA reference, as long as it is reasonably designed to draw the public's attention to FINRA membership. Firms should note that IM-2210-4 also applies to a website relating to a firm's investment banking or securities business that is maintained by or on behalf of any person associated with the firm.

**Reference and Hyperlink to BrokerCheck**

The SEC approved amendments to FINRA Rule 2210 to require a readily apparent reference and hyperlink to BrokerCheck on member firms' websites. Specifically, Rule 2210(d)(8)(A) requires a member firm's website to include a readily apparent reference and hyperlink to BrokerCheck on:

- the initial Web page that the member firm intends to be viewed by retail investors; and
- any other Web page that includes a professional profile of one or more registered persons who conduct business with retail investors.

A hyperlink to the BrokerCheck home page satisfies the rule's linking requirements. Alternatively, firms may elect to satisfy the requirements of the rule by using a "deep-link" to the firm or associated person's individual BrokerCheck pages. (Ref. FINRA Regulatory Notice 15-50; Dec. 2015; Effective Date: June 6, 2016)

*Note: The rule does not require a member firm to include a readily apparent reference and hyperlink to BrokerCheck on third-party websites, social media sites (e.g., Twitter or LinkedIn) or emails or text messages sent by a member firm or registered person to a retail investor.*

Rule 2210 requires each of a firm's websites to include a readily apparent reference and hyperlink to BrokerCheck on (1) the initial web page that the firm intends to be viewed by retail investors, and (2) any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors. To assist firms in complying with this new requirement, FINRA developed BrokerCheck-related icons and similar resources. Regulatory Notice 15-50 states that a firm need not include a readily apparent reference and hyperlink to BrokerCheck from communications appearing on a third-party website including social media sites or in email or text messages.

Rule 2210(d)(8) specifically references websites, so there is no requirement to include a reference and hyperlink to BrokerCheck in an app created by a firm. However, if an app accesses and displays a webpage on the firm's website that is required to include the BrokerCheck link under the rule, the firm must ensure that the link is readily apparent when the page is displayed through the app. *Ref. FINRA Regulatory Notice 17-18; April 2017* ►►

**Implementation Strategy**

The Firm's designated supervisor will ensure that a reference and hyperlink to BrokerCheck is included on the Firm's main Web page and on any Web page that includes professional profiles of its registered persons.

**Use of FINRA-Owned Corporate Names**

The amendments to IM-2210-4 also limit the use of any other corporate name owned by FINRA, including NASD, the Trade Reporting and Compliance Engine (TRACE) and the Alternative Display Facility (ADF).Members can neither state nor imply in any communications with the public that FINRA (or any other corporate name or facility owned by FINRA) endorses, indemnifies or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security. (Ref. Regulatory Notice 07-47; Effective Date Nov. 17, 2007) ►►

**Implementation Strategy**

The Firm's designated supervisor will ensure that if the Firm refers to its membership in FINRA on its website (including any legend posted on its website), it will provide a hyperlink to FINRA's home page, (www.finra.org ) in accordance with FINRA requirements. In the event that the Firm's website has more than one reference to FINRA membership, the Firm will place the hyperlink in close proximity to any FINRA reference that is reasonably designed to draw the public's attention to FINRA membership.

**FINRA Advertising Regulation Spot-Checks**

All FINRA broker/dealer firms are subject to a spot-check of their advertising and/or sales literature by FINRA Advertising Regulation Department. Upon notification of a spot-check, the notified firm should submit all requested documentation to FINRA Advertising Regulation Department within the specified time period. Any information submitted as a result of a previous spot-check will not be requested or required for filing. Certain exemptions may apply for firms that are subject to spot-checks by other registered securities exchanges or self-regulatory organizations that use similar procedures to those of FINRA.

**Exclusions From Filing Requirements**

The following is a brief list of some of the exemptions from advertising requirements:

- Advertisements and sales literature that previously have been filed and that are to be used without material change; FINRA Rule 2210(c)(7)(A) continues this exclusion for retail communications that meet these standards;

- retail communications that are based on templates that were previously filed with FINRA if the changes are limited to updates of more statistical or other non-narrative information; Although there is no similar express filing exclusion in NASD Rule 2210, this exclusion is based in part on an earlier staff interpretation concerning how NASD Rule 2210's approval, recordkeeping and filing requirements apply to statistical updates contained in pre-existing templates;

- Advertisements and sales literature solely related to recruitment or changes in a member's name, personnel, electronic or postal address, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member; this exclusion has been replaced by FINRA Rule 2210(c)(7)(C), which excludes retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the firm;
- advertisements and sales literature that do no more than identify a national securities exchange symbol of the firm or identify a security for which the firm is a registered market maker; advertisements and sales literature that do no more than identify the firm or offer a specific security at a stated price; certain "tombstone" advertisements governed by Securities Act Rule 134; and press releases that are made available only to members of the media. FINRA Rules 2210(c)(7)(D), (E), (G) and (H) carry forward these filing exclusions for retail communications that meet the same standards
- Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Securities and Exchange Commission (the "SEC") or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482;
- filing reprints of independently prepared articles or reports. FINRA Rule 2210(c)(7)(I) maintains the filing exclusion for retail communications that meet the same standards;
- correspondence and institutional sales material. FINRA Rules 2210(c)(7)(J) and (K) maintain these filing exclusions for correspondence and institutional communications;
- material that refers to investment company securities, direct participation programs or exempted securities solely as part of a listing of products or services offered by the member firm. This provision has been replaced by FINRA Rule 2210(c)(7)(L), which excludes from filing retail communications that are posted on online interactive electronic forums, such as an electronic bulletin board or an interactive forum that is contained on a social media website. Under NASD Rule 2210, posts on interactive electronic forums are considered public appearances.30 Under FINRA Rule 2210, such posts will be considered retail communications, assuming the forum is available to retail investors. Nevertheless, FINRA is excluding these posts from Rule 2210's filing requirements;
- new filing exception for press releases issued by closed-end investment companies listed on the NYSE that are subject to the "immediate release policy" under section 202.06 of the NYSE Listed Company Manual (or any successor provision). (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013) ►►

**Implementation Strategy**

In the event that the Firm has not previously filed advertisements with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule), the designated supervisor shall

ensure that the Firm file its initial advertisement with the Department at least 10 business days prior to use and shall continue to file its advertisements at least 10 business days prior to use for a period of one year. The designated supervisor will ensure that the Firm provides with each filing the actual or anticipated date of first use, the name and title of the designated supervisor or other registered principal who approved the advertisement or sales literature, and the date that the approval was given.

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), the Firm must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

- Advertisements and sales literature concerning mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts that include or incorporate performance rankings or performance comparisons; advertisements concerning CMOs; and security futures
- Investment analysis tool, written report, or related sales material

The designated supervisor will also ensure that the Firm files the following advertisements and sales literature with FINRA Advertising Department within 10 business days of first use or publication (and/or when applicable):

- Advertisements and sales literature concerning mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts not included within the requirements of paragraph (c)(3) of the Rule.; advertisements concerning DPPs and government securities.

## 7.05 Record keeping Requirements

FINRA Rule 2210(b)(4) (formerly NASD Rule 2210(b)(2)) requires firms to maintain all advertisements, sales literature and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three (3) years from the date of last use. The file must include:

(i) a copy of the communication and the dates of first and last use;

(ii) the name of the registered principal who approved the communication and the date approval was given, unless approval was not required; and

(iii) for any communication for which principal pre-use approval was not required, the name of the other firm that filed the communication with FINRA and a copy of the corresponding Advertising Regulation Department review letter.

FINRA Rule 2210(b)(4) (formerly NASD Rule 2211(b)(2)) requires firms to maintain records of institutional sales material for a period of three years from the date of last use, including the name of the person who prepared each of the communications.

FINRA Rule 2210(b)(4)(A) sets forth the recordkeeping requirements for retail and institutional communications; generally, these requirements mirror current recordkeeping requirements. This provision incorporates by reference the recordkeeping format, medium and retention period requirements of SEA Rule 17a-4.

FINRA Rule 2210(b)(4)(A) specifies that such records must include:

- a copy of the communication and the dates of first and (if applicable) last use;
- the name of any registered principal who approved the communication and the date that approval was given;

- in the case of a retail communication or institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- for retail communications that rely on the exception under paragraph (b)(1)(C) the name of the firm that filed the retail communication with FINRA and a copy of the Advertising Regulation Department's review letter.

FINRA Rule 2210(b)(4)(B) cross-references FINRA Rule 3110(b)(4) and FINRA Rule 4511 with respect to correspondence recordkeeping requirements. (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)

## 7.06 Approval, Review and Recordkeeping Requirements

### Principal Pre-Use Approval Requirements for Retail Communications

FINRA Rule 2210(b)(1)(A) requires an appropriately qualified registered principal of the firm to approve each retail communication before the earlier of its use or filing with FINRA. The principal registration required to approve particular communications depends upon the permissible activities for each principal registration category. The rule change eliminates Incorporated NYSE Rule 472(a)(1), which requires an "allied member, supervisory analyst, or qualified person" to approve in advance each advertisement, sales literature or other similar type of communication by an NYSE member firm.

The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to NYSE Rule 344 with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

### Exceptions From Principal Pre-Use Approval Requirements for Retail Communications

FINRA Rule 2210(b)(1)(C) provides an exception from the principal pre-use approval requirements for retail communications, if, at the time that a firm intends to publish or distribute it: (i) another firm has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the firm using the communication in reliance on this exception has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Advertising Regulation Department's letter. FINRA Rule 2210(b)(1)(C) preserves this exception for retail communications.

FINRA Rule 2210(b)(1)(D) excepts from the principal pre-use approval requirements of Rule 2210(b)(1)(A) three additional categories of retail communications, provided that the firm supervises and reviews the communications in the same manner as required for supervising and reviewing correspondence pursuant to FINRA Rule 3110(b)(4). These communications include: (i) any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the firm.

As discussed above, the first category generally carries forward a current exception from the principal pre-use approval requirements for market letters. The second category codifies a current interpretation of the rules governing communications with the public that allows firms to supervise communications posted on interactive electronic forums in the same manner as is required for supervising correspondence.

Currently firms are not required to have a principal approve prior to use correspondence that is sent to 25 or more existing retail customers within any 30 calendar-day period and that does not make any financial or investment recommendation or otherwise promote a product or service of the firm.[15] The third category applies this same standard to all retail communications, rather than just correspondence sent to existing retail customers. Accordingly, a firm will not be required to approve prior to use any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the firm. Firms will still be required to supervise such retail communications in the same manner as correspondence

FINRA expects firms to apply the same analysis used today to analyze correspondence regarding principal pre-use approval to all retail communications. For example, this exception would cover communications that are administrative or informational in nature, such as communications that inform investors that their account statement is available online or the date on which a security in an investor's portfolio is expected to pay a dividend.

FINRA Rule 2210(b)(1)(F) provides that, notwithstanding any other provision of FINRA Rule 2210, a registered principal must approve a communication prior to the firm filing it with the Advertising Regulation Department. FINRA Rule 2210(b)(1)(A) requires a principal to approve each retail communication before the earlier of its use or filing with FINRA, subject to certain exceptions. FINRA Rule 2210(b)(1)(F) is intended to clarify that an appropriately qualified principal must approve **any** communication that is filed with the Advertising Regulation Department, even if a communication otherwise would come under an exception to the principal pre-use approval requirements of FINRA Rule 2210(b)(1)(A).

**Correspondence and Institutional Communications**

Former NASD Rules 2211(b)(1) and FINRA Rule 3110(b) impose certain supervisory and review requirements with regard to a firm's correspondence and institutional sales material. FINRA Rules 2210(b)(2) and (3) generally maintain the supervision and review standards for correspondence and institutional communications that are currently found in NASD Rules 2211 and FINRA Rule 3110(b). (Ref. Regulatory Notice 12-29; June 2012; effective February 4, 2013)►►

**Implementation Strategy**

On an ongoing basis, the designated principal will approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with FINRA's Advertising Regulation Department. With respect to debt and equity securities that are the subject of research reports, this requirement may be met by the signature or initial of a supervisory analyst. A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

**FINRA disclosure requirements for non-promotional communications like educational materials or reference resources**

The extent of disclosure needed depends on the type of communication and how it is used in the sales process. Communications that promote or offer specific securities, types of securities, or securities services generally require disclosure. Promotional communications discuss the benefits of a particular product, type of product, or service and, under the rules, require balancing discussions of the risks or drawbacks. In contrast, non-promotional communications including the following may not require the same level of detail.

- **Brand communications:** Brand communications that only acquaint investors with a firm's name and the fact that it offers financial services generally require no additional information in order to be fair and balanced.

- **Educational communications:** FINRA encourages members to use educational communications that promote financial literacy. For example, a member might develop a website that explains different types of securities and how markets work, but because it does not promote specific securities or services it may only require a simple statement noting that securities involve risks and an offer to provide additional information. Another example is educational content that only provides basic information about what mutual funds are and does not include information that relates to the desirability of a specific product; such a communication would not need to disclose the specific risks associated with a particular fund.
- **Reference resources:** Some members provide websites, apps or other reference resources that do not promote a specific product or service; instead, they provide information intended to assist investors with investment decisions. In general, investors must choose to access these resources and interact with them to find the information (e.g., by downloading an app or creating an online account on the firm's website). A resource that does not promote specific products or services generally need little or no disclosure under FINRA rules.
- **Post-sale communications:** Once a sale has occurred, members may provide communications to investors that discuss the product, such as changes to its portfolio or information about how the product has responded to changes in market conditions. These subsequent communications typically do not require the same extent of disclosure as communications leading up to a sale. Of course, a post-sale communication that recommends additional purchases or another product would be a promotional communication. (Regulatory Notice 19-31; September 19, 2019)

## 7.07 Institutional Sales Material and Correspondence

### Key Definitions

The term "Correspondence" shall be defined as any written letter or electronic mail message distributed by a member to: (i) one or more of its existing retail customers; and (ii) fewer than 25 prospective retail customers within any 30 calendar-day period.

The term "Institutional Sales Material," consists of any communication that is distributed or made available only to institutional investors.

FINRA Rule 2211(a)(3) defines "institutional investor" as any (i) person described in Rule 3110(c)(4), regardless of whether that person has an account with an FINRA member; (ii) governmental entity or subdivision thereof; (iii) employee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and has at least 100 participants, but does not include any participants of such a plan; (iv) qualified plan, as defined in Section 3(a)(12)(C) of the Securities Exchange Act of 1934, that has at least 100 participants, but does not include any participant of such a plan; (v) FINRA member or registered associated person of such a member; and (vi) person acting solely on behalf of any such institutional investor.

*Note: no member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any person other than an institutional investor.*

### Required Principal Approval

The amendments to FINRA Rule 2211 approved by the SEC require registered principal pre-use approval of any correspondence sent to 25 or more existing retail customers within any 30 calendar-day period if the correspondence makes any financial or investment recommendation or otherwise promotes a product or service of the member. This correspondence need not be filed with FINRA Advertising Dept. and is not subject to all of the content standards of the advertising rules. Of course, a firm may choose to file this correspondence with FINRA Advertising Dept. to better ensure that it complies with applicable standards, particularly when the correspondence promotes the firm's products or services. (Ref. NTM 06-45; Effective Date Dec. 1, 2006) ►►

**Implementation Strategy**

In the event that the Firm sends correspondence to 25 or more existing retail customers within any 30 calendar-day period, and the correspondence makes a financial or investment recommendation or otherwise promotes a product or service of the Firm, the designated supervisor will pre-approve such correspondence and maintain documentary evidence of such approval in accordance with books and records.

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional sales material, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

**Recordkeeping Requirements**

Firms must maintain all institutional sales material in a file for a period of three years from the date of last use. The file must include the name of the person who prepared each item of institutional sales material. Members must maintain in a file of information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.

**Content Standards Applicable to Institutional Sales Material and Correspondence**

All institutional sales material and correspondence are subject to the content standards of FINRA Rule 2210(d)(1) and the applicable Interpretive Materials under FINRA Rule 2210.

All correspondence (which for purposes of this provision includes business cards and letterhead) must:

- prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;
- reflect any relationship between the member and any non-member or individual who is also named; and if it includes other names, reflect which products or services are being offered by the member.

Members may not use investment company rankings in any correspondence other than rankings based on (A) a category or subcategory created and published by a Ranking Entity as defined in IM-2210-3(a) or (B) a category or subcategory created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. ►►

**Implementation Strategy**

The designated supervisor will review a proportionate sample of institutional sales material to ensure the Firm’s correspondence (i) prominently disclose the Firm name (or a fictional name by which the FIrm is commonly recognized or which is required by any state or jurisdiction); (ii) reflect any relationship between the Firm and any non-member or individual who is also named; and if it includes other names, reflect which products or services are being offered by the Firm. All reviewed institutional sales correspondence will be initialed by the designated supervisor as evidence of review.

**Communication Rules to Disclosures Required to Plan Participants under Dept. of Labor (DOL)**

FINRA is providing guidance to firms on the application of NASD Rules 2210 and 2211 to information provided by a firm to participant-directed individual account plan participants pursuant to U.S. Department of Labor Rule 404a-5 under the Employee Retirement Income Security Act of 1974.

NASD Rule 2210(d)(3) requires firm communications with the public, other than institutional sales material and public appearances, that present non-money market fund open-end management investment company performance data as permitted by Rule 482 under the Securities Act and Rule 34b-1 under the Investment Company Act to disclose certain performance and expense information. To the extent that a firm provides information to plan participants that is required by and complies with the disclosure requirements set forth in the DOL rule, FINRA will treat the information as if it were a communication that satisfies the content and filing requirements of NASD Rules 2210 and 2211. Accordingly, firms are not required to file the information with FINRA pursuant to NASD Rule 2210(c), nor is the information subject to the content requirements of NASD Rule 2210(d), including the expense and performance related provisions of NASD Rule 2210(d)(3). Firms are cautioned, however, that including the disclosures required by the DOL rule in a communication does not affect other content not required by the DOL rule. Accordingly, to the extent a firm includes in an advertisement or item of sales literature content that promotes a product or service of the firm, and is in addition to what is required by the DOL rule, the non-required content is subject to the requirements of NASD Rules 2210 and 2211.

For example, if a firm prepares a brochure for plan participants that include the disclosures required by the DOL rule, and also includes non-required promotional content regarding investment company securities available as investment options through the plan, the non required content will be subject to the content and filing requirements of NASD Rules 2210 and 2211. A firm that prepared such a brochure would be required to file the brochure with FINRA for review of the content not required by the DOL rule. (Ref. Regulatory Notice 12-02; January 2012)

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## 7.08 Product Specific Retail & Institutional Communications and Correspondence

*Note: please see the specific sections in this Manual for further details on the filing requirements for specific products.* ►►

**Implementation Strategy**

Note: For a detailed description of the Firm's compliance and supervisory procedures as they apply to specific securities/investment products and services of the Firm, please see the appropriate product section in this Manual.

## 7.09 General Correspondence

As stated previously, "Correspondence" can be defined as any written or electronic communication to include form letters and group e-mails sent to existing retail customers and to fewer than 25 prospective retail customers within any 30 calendar-day period ("Group Correspondence"), as well as written and electronic communications prepared for delivery to a single retail customer. Therefore, it is the responsibility of the Firm's appropriately designated supervisor to monitor and review all correspondence before distribution and maintain relevant records in an accessible location.

**Correspondence and Internal Communications Review**

FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) generally incorporates the substance of NASD Rule 3010(d)(2) (Review of Correspondence) and requires a firm to have supervisory procedures, which are appropriate for the firm's business, size, structure and customers, to review incoming and outgoing written (including electronic) correspondence and internal communications relating to its investment banking or securities business. In particular, the supervisory procedures must require the firm's review of (1) incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities and communications that are of a subject matter that require review under FINRA rules and federal securities laws; and (2) internal communications to properly identify communications that are of a subject matter that require review under FINRA rules and federal securities laws.

The rule also requires that reviews of correspondence and internal communications be conducted by a registered principal and be evidenced in writing, either electronically or on paper.

**Risk-based Review**

FINRA Rule 3110.06 (Risk-based Review of Correspondence and Internal Communications) reflects existing guidance regarding a firm's ability to use risk-based principles to review its correspondence and internal communications. Specifically, a firm, by employing risk based principles, must decide the extent to which additional policies and procedures for the review of incoming and outgoing written (including electronic) correspondence that fall outside of the subject matters listed in FINRA Rule 3110(b)(4) are necessary for its business and structure. If a firm's procedures do not require that all correspondence be reviewed before use or distribution, the procedures must provide for.

- the education and training of associated persons regarding the firm's procedures governing correspondence;
- the documentation of such education and training; and
- surveillance and follow-up to ensure that such procedures are implemented and followed.

In addition, with respect to internal communications, FINRA Rule 3110.06 requires a firm, by employing risk-based principles, to decide the extent to which additional policies and procedures

for the review of these internal communications that are not of a subject matter that require review under FINRA rules and federal securities laws are necessary for its business and structure. Consistent with the guidance, FINRA Rules 3110(b)(4) and 3110.06 do not require that a firm review every internal communication. For instance, if a firm does not engage in any activities that are of a subject matter that require review, a firm would not be required to review its internal communications for references to those activities, provided that its supervisory procedures acknowledged that factor as part of the firm's determination that its procedures were reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules.

**Evidence of Review**

FINRA Rule 3110.07 (Evidence of Review of Correspondence and Internal Communications) codifies existing guidance that a firm must identify what communication was reviewed, the identity of the reviewer, the date of review and the firm's actions taken as a result of any significant regulatory issues identified during the review. Merely opening a communication is not sufficient review. FINRA Rule 3110.07 permits the use of lexicon-based screening tools or systems; however, as noted in *Regulatory Notice 07-59*, firms using automated tools or systems in the course of their supervisory review of electronic communications must have an understanding of the limitations of those tools or systems and should consider what, if any, further supervisory review is necessary in light of those limitations. Furthermore, the use of electronic surveillance tools to review communications represents a direct exercise of supervision by the supervisor (including any use of such tools by the supervisor's delegate to review communications). The supervisor remains responsible for the discharge of supervisory responsibilities in compliance with the rule and also is responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed.

With respect to communications reviewed by electronic surveillance tools that are not selected for further review, a firm may demonstrate compliance with FINRA Rule 3110.07 if the electronic surveillance system has a means of electronically recording evidence that those communications have been reviewed by that system. With respect to communications that do not generate alerts, a firm may use an electronic surveillance or reviewing tool that only captures the specified information fields to the extent necessary to comply with applicable FINRA and SEC rules.

**Delegation of Review**

FINRA Rule 3110.08 (Delegation of Correspondence and Internal Communication Review Functions) codifies guidance that a supervisor or principal may delegate review functions to an unregistered person; however, the provision also codifies the principle noted above, that the supervisor or principal remains ultimately responsible for the performance of all necessary supervisory reviews

**Retention of Communications**

FINRA Rule 3110.09 (Retention of Correspondence and Internal Communications) requires a firm to retain its internal communications and correspondence of associated persons relating to the firm's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a-4(b). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence must be ascertainable from the retained records, and the retained records must be readily available to FINRA upon request.

**Incoming Correspondence**

When reviewing incoming correspondence, the designated supervisor will ensure that all such correspondence, to include letters, facsimiles, and other similar materials, meet the criteria of the

General and Specific Standards as set forth in *Rule 2210* (*Note: Personal mail will also be subject to the policy of Incoming Correspondence).*

**Outgoing Correspondence**

When preparing and reviewing outside correspondence, the designated supervisor will ensure that all such correspondence meet the criteria of the Content Standards of Rule 2210 and the Guidelines to Ensure That Communications With the Public Are Not Misleading as set forth in IM-2210-1. ►►

**Implementation Strategy**

All outgoing correspondence sent by each registered representative shall be faxed or otherwise submitted to the designated principal for review and maintained in a centralized outgoing correspondence file. The designated principal shall review a representative sample of outgoing correspondence on an ongoing basis. All outgoing correspondence reviewed by the designated principal will be initialed and dated as evidence of review. All incoming correspondence received by each registered representative will be maintained in a centralized incoming correspondence file. During each annual OSJ or otherwise scheduled Branch or Satellite review (if applicable), the designated examiner will review a random sample of both incoming and outgoing correspondence to verify that all materials are being submitted and maintained as required.

## 7.10 Consolidated Account Statements (CAS)

Many firms, as a service to their customers, provide documents that consolidate information regarding a customer's various financial holdings. These consolidated reports offer a broad view of customers' investments, may include assets held away from the firm, and may provide not only account balances and valuations, but performance data as well. In many cases these consolidated reports are prepared at the request of the customer, who may also direct which of his or her accounts to include and provide access to data for non-held accounts. These communications may supplement, but do not replace, the customer account statement required pursuant to NASD Rule 2340 and NYSE Rule 409, which is prepared and disseminated to the customer through a separate process. Consolidated reports may not be represented as a substitute for, and must be distinguished from, account statements that are required by rule.

FINRA Regulatory Notice 10-19, issued in April 2010, reminded firms of their responsibilities when providing customers with consolidated financial account reports and set forth certain requirements for their design, attendant disclosures, retention of supporting documentation and supervisory obligations. Consolidated reports are communications with the public. Therefore, they must be clear, accurate and not misleading. For assets held at the firm, this includes providing information, including valuations, that is consistent with the customer's official account statement. For assets held away, this includes, among other things, taking reasonable steps to accurately reproduce information obtained regarding outside accounts and not to include information that is false or misleading.

Consolidated reports, particularly those published on firm letterhead, can create a misconception that the firm produced or verified all of the data, including the valuation of assets held away. Therefore, these reports should be constructed and provided in such a manner that neither customers nor third parties with whom the customer interacts (e.g., banks, mortgage companies, other broker-dealers) are likely to be confused or misled as to the nature of the information presented, or mistake these documents for official account statements regarding the reported assets.

The design and formatting of consolidated reports is important for ensuring information is clearly communicated. In addition to the general guidelines outlined above, firms are encouraged to include, when applicable, the following disclosures:

- that the consolidated report is provided for informational purposes and as a courtesy to the customer, and may include assets that the firm does not hold on behalf of the customer and which are not included on the firm's books and records;
- the names of the entities providing the source data or holding the assets, their relationship with each other (e.g., parent, subsidiary or affiliated organization) and their respective functions (introducing/carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);
- a statement clearly distinguishing between assets held or categories of assets held by each entity included in the consolidated report;
- the customer's account number and contact information for customer service at each entity included in the consolidated report;
- identify that assets held away may not be covered by SIPC; and
- if the consolidated report provides aggregate values for several different assets, an explanation of how the aggregated values of the different types of assets were arithmetically derived from separate asset totals.

**Internal Policy**

The Firm does allow its representatives to prepare and distribute consolidated account statements and while it strongly encourages the use of DST Vision Pro's consolidated account statement software due to its inherent data integrity along with its adherence to regulatory requirements and recommended disclosures, the Firm also realizes that some of its customers' consolidated account reporting needs may exceed the capability of such aggregating systems such as DST Vision Pro.

The firm requires that consolidated account statements contain the following disclosure:

> **Securities offered through American Investors Company, member FINRA/SIPC.**
>
> **This consolidated report is provided as a courtesy for informational purposes and may include assets that the firm does not hold on your behalf, and that are not included on the firm's books and records. It is not intended, in any manner, as an official statement.**
>
> Data contained in this report is obtained from third parties or directly from you in the event that you requested this report include other assets such as personally-owned real estate, family business interests, etc.
>
> For additional information regarding source data for assets contained in this consolidated report that are held by other entities, such as brokerage firms, mutual funds, insurance and trust companies, refer to the underlying statements received directly by you from those entities. For entity contact information, you may also refer to these underlying statements or visit the entities' websites. Please note that only securities held by a brokerage firm are subject to SIPC (Securities Investor Protection Corporation) coverage.
>
> Values are as of the date indicated on the report. We believe the sources to be reliable; however, the accuracy and completeness of the information is not guaranteed.
>
> Performance data provided, if applicable, represents past performance and does not guarantee future results. Cost basis information, if provided, may be incomplete or may not accurately reflect the methodology used by a particular client. Investment returns and values will fluctuate so that your shares or units, when redeemed, may be worth more or less than the original cost.

Unless otherwise indicated, the values for Direct Participation Programs (DPPs) including Real Estate Investment Trusts (REITs), Business Development Companies (BDCs), Limited Liability Companies (LLCs), and Limited Partnerships (LPs), have been provided by the DPPs' sponsors, generally through an intermediary, and purport to reflect an estimate of the interest in the DPP represented by the shares or units held. Where no value is indicated, valuation information may not be available. DDP securities are generally illiquid and the value stated may not be realized if you seek to liquidate the security nor may you be able to effect a liquidation.

All manually created consolidated account statements must also include the following disclosure:

Estimates of yield or income, where presented, are estimates based on mathematical calculations using available data and have been obtained from sources believed to be reliable, but no assurance can be made as to their accuracy. The calculations take into account the most recently declared dividends/distributions, annualized, (or trailing twelve month dividends/distributions, if otherwise indicated) which are then divided by the underlying position's value as of the date of this report.

These estimates may include return of principal or capital gains, which would render them overstated. In addition, estimates may also be calculated for securities where dividends/distributions are reinvested and not paid out as current income. Estimates reflect income or distributions generated by an investment but do not reflect changes in price which may fluctuate.

Since interest, dividend and distribution rates are subject to change at any time, and may be affected by current and future economic, political and business conditions, these estimates should not be relied upon as assurances or guarantees of future income or performance.

**Implementation Strategy**
All consolidated account statements (CAS) prepared and sent by each registered representative shall be submitted to the Home Office. Representatives shall maintain a separate file that includes all CAS and underlying supporting documentation for manually-entered CAS data items, where applicable.
On a periodic basis, the designated principal will review a representative sample of CAS to ensure that the appropriate disclosure(s) are included. Additionally, on a periodic basis, the designated principal will review a representative sample of CAS that contain manually added positions to confirm the accuracy of the information contained on the CAS. All CAS and supporting documentation reviewed by the designated principal will be initialed and dated as evidence of review.
During each annual OSJ or otherwise scheduled Branch or Satellite review (if applicable), the designated examiner will review a random sample of CAS and supporting documentation, where applicable, to verify that all materials are being submitted and maintained as required.

## 7.11 Electronic Communications

The Firm is responsible for designating an appropriate principal to monitor and supervise all incoming and outgoing electronic communications with the public. The term "electronic communications" can be defined as any communication transmitted through an electronic medium such as email systems, facsimiles, Intranet, Internet (World Wide Web), electronic bulletin boards, and any other communication systems that can be used, distributed, and received electronically.

The following is a list of some of the guidelines relating to the supervision and enforcement of the Firm's policy on electronic communications:

## Internal Policy

All associated persons of the Firm will be informed that all communications distributed through electronic means are to be used for business purposes only and that any such communications are not to be considered private under any circumstances. Participation in electronic chat rooms, or electronically downloading unauthorized attachments or other information from an otherwise unknown source, is strictly prohibited. It is the policy of the Firm that any action, which is not in compliance, and does not conform to appropriate business standards, may lead to disciplinary action.

## Email Review and Retention

Incoming and outgoing electronic correspondence (e-mail) is captured by the Firm's email archiving system. The designated supervisor conducts a post-review sample of such e-mail correspondence in conjunction with these policies and procedures. Evidence of the review of e-mail correspondence will be maintained.

### Implementation Strategy

Incoming and outgoing electronic correspondence (e-mail) is captured by the Firm's email archiving system. The designated principal conducts a post-review sample of such e-mail correspondence on an ongoing basis in compliance with these policies and procedures. Evidence of the review of e-mail correspondence will be maintained.

## Social Media Web Sites

As provided in Notice 10-06 issued January 2010, in September 2009, FINRA organized a Social Networking Task Force composed of FINRA staff and industry representatives to discuss how firms and their registered representatives could use social media sites for legitimate business purposes in a manner that ensures investor protection. Based on input from the Task Force and others, and further staff consideration of these issues, FINRA is issuing this *Notice* to guide firms on applying the communications rules to social media sites, such as blogs and social networking sites. The goal of this *Notice* is to ensure that—as the use of social media sites increases over time—investors are protected from false or misleading claims and representations, and firms are able to effectively and appropriately supervise their associated persons' participation in these sites.

### RecordKeeping Responsibilities

As the use of social media sites increases over time, firms are required to protect their investors protected from false or misleading claims and representations, and maintain a system that is able to effectively and appropriately supervise their associated persons' participation in these sites.

### Suitability Responsibilities

In the event that a firm is permitted to recommend a security through one or more social media sites, a firm must first comply with the requirements under FINRA Rule 2111 (formerly NASD Rule 2310) regarding suitability whereby the firm must ultimately determine that a recommendation is suitable for every investor to whom it is made. Whether a particular communication constitutes a "recommendation" for purposes of FINRA Rule 2111 (formerly NASD Rule 2310) will depend on the facts and circumstances of the communication. Firms should consult *Notice to Members (NTM) 01-23* (Online Suitability) for additional guidance concerning when an online communication

falls within the definition of “recommendation” under FINRA Rule 2111 (formerly NASD Rule 2310). ►►

**Implementation Strategy**

It is the Firm’s current policy to prohibit all interactive electronic communications that recommend a specific investment product and any link to such a recommendation unless a designated supervisor has previously approved the content. Further, the Firm may prohibit communications that recommend a specific investment product unless the communication conforms to a pre-approved template and the specific recommendation has been approved by a designated supervisor.

**Third-Party Posts**

In the event that a firm’s customer or other third party posts content on a social media site established by the firm or its personnel, FINRA generally will not treat posts by customers or other third parties as the firm’s communication with the public subject to Rule 2210. Thus, the prior principal approval, content and filing requirements of Rule 2210 do not apply to these posts. Under certain circumstances, however, third-party posts may become attributable to the firm. Whether third-party content is attributable to a firm depends on whether the firm has (1) involved itself in the preparation of the content or (2) explicitly or implicitly endorsed or approved the content.

*Note: The SEC has referred to circumstance (1) above as the “entanglement” theory (i.e., the firm or its personnel is entangled with the preparation of the third-party post) and (2) as the “adoption” theory (i.e., the firm or its personnel has adopted its content). Although the SEC has employed these theories as a basis for a company’s responsibility for third-party information that is hyperlinked to its Web site, a similar analysis would apply to third-party posts on a social media site established by the firm or its personnel. FINRA does not consider a third-party post to be a firm communication with the public unless the firm or its personnel either is entangled with the preparation of the third-party post or has adopted its content.*

**Hyperlinks and Sharing**

By sharing or linking to specific content, the firm has adopted the content and would be responsible for ensuring that, when read in context with the statements in the originating post, the content complies with the same standards as communications created by, or on behalf of, the firm.

Solely by sharing or linking to content that contains links, a firm would not be responsible for the content available at such links. Additional facts and circumstances will determine whether the firm has adopted or become entangled with such content. In general, if a firm shares or links to content that in turn links to other content over which the firm has no influence or control, the firm would not have adopted the other content. In contrast, if a firm shares or links to content that in turn links to other content over which the firm has influence or control, the firm would then have adopted that other content.

In addition, where the firm shares or links to content that itself serves primarily as a vehicle for links, or where content available through such links forms the entire basis of the article, the firm would have adopted the other content accessed through such links (e.g., a firm reposts a microblog post that promotes content through a link, or a firm links to a webpage made up largely of a link or links to other content.

Whether a firm has adopted the content of an independent third-party website or any section of the website through the use of a link is fact dependent. Two factors are critical to the analysis: (1) whether the link is "ongoing" and (2) whether the firm has influence or control over the content of the third-party site. *Ref. FINRA Regulatory Notice 17-18; April 2017*

**Native Advertising**

Native advertising is defined as content that bears a similarity to the news, feature articles, product reviews, entertainment and other material that surrounds it online. For example, native advertising may be a video or article posted by an advertiser on an independent third-party publisher's site that is presented alongside, and in a manner similar to, content posted by the publisher.

Firms may use native advertising that complies with the applicable provisions of FINRA Rule 2210, including the requirements that firms' communications be fair, balanced and not misleading. In particular, native advertising must prominently disclose the firm's name, reflect accurately any relationship between the firm and any other entity or individual who is also named, and reflect whether mentioned products or services are offered by the firm as required by Rule 2210(d)(3). *Ref. FINRA Regulatory Notice 17-18; April 2017*

**Testimonials and Endorsements**

FINRA does not regard unsolicited third-party opinions or comments posted on a social network to be communications of the broker-dealer or the representative for purposes of Rule 2210, including the requirements related to testimonials in paragraph (d)(6).

However, retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

- The fact that the testimonial may not be representative of the experience of other customers.
- The fact that the testimonial is no guarantee of future performance or success.
- If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial

The disclosures may be provided in the interactive electronic communication itself in close proximity to the testimonial or the disclosures may be made through a clearly marked hyperlink accompanying the testimonial using language such as "important testimonial information," provided of course that the testimonial is not false, misleading, exaggerated or promissory. *Ref. FINRA Regulatory Notice 17-18; April 2017*

> *Note: Firms registered under the Investment Advisers Act of 1940 (Advisers Act) should be aware that Section 206(4) generally prohibits any investment adviser from engaging in any act, practice or course of business that the Commission, by rule, defines as fraudulent, deceptive or manipulative. In particular, Advisers Act Rule 206(4)-1(a)(1) states that "[i]t shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business . . . for any investment adviser registered or required to be registered under [the Advisers Act], directly or indirectly, to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser."*

**Correction of Third-party Content**

In the event that an unaffiliated third-party publisher posts an online directory of businesses and includes information about registered representatives of a broker dealer which include factual

errors (e.g., a misspelled name; incorrect street, website or email address; incorrect phone numbers), the fact that the firm or representative contacted the publisher regarding the correction of the factual information related to the directory listing would not mean that the corrected listing is a communication of the firm or the representative. Firms also may correct the error by posting a comment on the listing that includes the correct information without being deemed to have adopted the original, incorrect listing. *Ref. FINRA Regulatory Notice 17-18; April 2017* ►►

**Implementation Strategy**

Not applicable. The Firm does not allow the use of interactive business-related social media sites.

**Supervision of Social Media Sites**

Firms must adopt policies and procedures reasonably designed to ensure that their associated persons who participate in social media sites for business purposes are appropriately supervised, have the necessary training and background to engage in such activities, and do not present undue risks to investors. Firms must have a general policy prohibiting any associated person from engaging in business communications in a social media site that is not subject to the firm's supervision. Firms also must require that only those associated persons who have received appropriate training on the firm's policies and procedures regarding interactive electronic communications may engage in such communications.

**Static and Interactive Electronic Forums**

A "blog" is generally defined as a Web site that contains an online personal journal with reflections, comments, and often hyperlinks provided by the writer." Historically, some blogs have consisted of static content posted by the blogger. FINRA considers static postings to constitute "advertisements" under Rule 2210. If a firm or its registered representative sponsors such a blog, it must obtain prior principal approval of any such posting. Today, however, many blogs enable users to engage in real-time interactive communications. If the blog is used to engage in real-time interactive communications, FINRA would consider the blog to be an interactive electronic forum that does not require prior principal approval; however, such communications must be supervised, as discussed below.

Social networking sites typically contain both static and interactive content. The static content remains posted until it is changed by the firm or individual who established the account on the site. Generally, static content is accessible to all visitors to the site. Examples of static content typically available through social networking sites include profile, background or wall information. As with other Web-based communications such as banner advertisements, a registered principal of the firm must approve all static content on a page of a social networking site established by the firm or a registered representative before it is posted. Firms may use an electronic system to document these approvals.

Social networking sites also contain non-static, real-time communications, such as interactive posts on sites such as Twitter and Facebook. The portion of a social networking site that provides for these interactive communications constitutes an interactive electronic forum, and firms are not required to have a registered principal approve these communications prior to use. Of course, firms still must supervise these communications, as discussed below.

While prior principal approval is not required under Rule 2210 for interactive electronic forums, firms must supervise these interactive electronic communications under FINRA

Rule 3110(b)(4) in a manner reasonably designed to ensure that they do not violate the content requirements of FINRA's communications rules.

Firms may adopt supervisory procedures similar to those outlined for electronic correspondence in *Regulatory Notice 07-59* (FINRA Guidance Regarding Review and Supervision of Electronic Communications). As set forth in that *Notice*, firms may employ risk-based principles to determine the extent to which the review of incoming, outgoing and internal electronic communications is necessary for the proper supervision of their business. For example, firms may adopt procedures that require principal review of some or all interactive electronic communications prior to use or may adopt various methods of post-use review, including sampling and lexicon-based search methodologies as discussed in *Regulatory Notice 07-59.* (Ref. Notice 10-06; Issued January 2010)

*NOTE: The Firm does not prohibit the use of social networking sites for non-business purposes.*

**Permissible Electronic Communication Mechanisms**

The following is the Firm's policy regarding the use of the certain communication mechanisms and technologies (both static and interactive electronic forums) to communicate with the public for security and advisory business related purposes:

| Forms of Social Media Communications | Permitted | Prohibited |
|---|---|---|
| Internal Email Platform (member supplied email) | ☑ | ☐ |
| Non-Member Email Platforms (e.g. Yahoo; AOL, etc.) | ☐ | ☑ |
| E-faxes | ☑ | ☐ |
| Instant Messaging | ☐ | ☑ |
| Third-Party Communications (e.g. Bloomberg; Reuters) | ☐ | ☑ |
| Weblogs ("blogs") | ☐ | ☑ |
| Podcasts | ☐ | ☑ |
| Message Boards | ☐ | ☑ |
| LinkedIn | ☑ | ☐ |
| Facebook | ☐ | ☑ |
| Twitter | ☐ | ☑ |

*Note: Any associated person found using prohibited electronic communication mechanisms may receive disciplinary action up to termination.*

**Internet-based Electronic Communications**

In the event that the Firm or its registered representatives maintain a website on the Internet, the Firm acknowledges that any distribution of business related electronic communications may be considered advertising by definition under *Rule 2210*, and is therefore prohibited unless reviewed and approved by a designated supervisor of the Firm.

If a website includes an email address and or "contact us" type webpage, all securities communication must be directed to the Firm approved email address. If communication pertaining to securities is sent to a non-approved AIC email address, the email must be forwarded to the Firm approved email address for archival and compliance review and the customer notified that they should send future securities-related correspondence to the Firm approved email address.

**Instant Messaging**

Instant messaging was originally introduced as an add-on to subscription Internet services, but has a growing presence in business communication. Depending on the circumstances, instant messaging could be either sales literature or correspondence in accordance with Rule 2210. In the event that the Firm uses such technology, the Firm must supervise the use of instant messaging consistent with the required supervision of e-mail messaging. If the Firm is unable to establish an adequate supervisory program regarding the use of instant messaging technology, the Firm shall prohibit the use of such activity involving customer communications. The Firm will also ensure that its use of instant messaging complies with applicable SEC and FINRA recordkeeping requirements. (Ref. NTM 03-33)

**Text Messaging/Chat Services**

As with social media, every firm that intends to communicate, or permit its associated persons to communicate, with regard to its business through a text messaging app or chat service must first ensure that it can retain records of those communications as required by SEA Rules 17a-3 and 17a-4 and FINRA Rule 4511. SEC and FINRA rules require that, for record retention purposes, the content of the communication determines what must be retained. *Ref. FINRA Regulatory Notice 17-18; April 2017*►►

**Implementation Strategy**

The Firm does not currently maintain a platform which enables it to monitor, archive, and retrieve instant message traffic. Therefore, the use of instant messaging technology for communications with public customers involving business and/or investment related activities is strictly prohibited. The designated principal will ensure that associated persons are properly notified of this internal policy and refrain from engaging in any instant messaging communications with the public involving business and/or investment related activities.

**Approval Requirements**

All communications that are electronically distributed may be subject to periodic review and approval by a designated principal of the Firm. The frequency and complexity of the approval process will be conducted in accordance with the current rules under *Rule 2210*, Communications with the Public.

**Maintenance of Books and Records**

It is the Firm's responsibility to preserve a periodic sample of incoming/outgoing electronic communications for overall compliance and review. The maintenance requirements for electronic communications will be similar to that of *Rule 2210*. ►►

**Implementation Strategy**

The designated principal will review and approve a representative sample of relevant electronic communications (e.g. email, facsimiles, Intranet, Internet,

electronic bulletin boards, etc.) concerning any firm-related information and/or investment advice. If necessary, such information will be submitted to FINRA the Advertising Department ten days prior to first use pursuant to *Rule 2210*.
The Firm has implemented the following representative-wide email system:

- All securities and AIC advisory business related emails, both outgoing and incoming, are processed through servers hosted by Global Relay.
- If email correspondence pertaining to AIC business has been received from customer at a non-approved AIC email address, the email will be forwarded to the AIC approved email address for archival and compliance review and the customer notified that they should send future correspondence to the AIC email address.
- All messages processed by those servers are passed through a proprietary content filtering system for supervision purposes, which flags email based on keywords and phrases. Messages that are flagged by the system are selectively reviewed by the designated principal on an ongoing basis and a record of review is maintained in the system.
- The documents are stored for a minimum of three years in a non-alterable medium as required by current regulations.

Any exceptions to this protocol must be pre-approved by the Home Office.

## 7.12 Electronic Delivery of Information

### Introduction

The Firm shall be responsible for providing adequate supervision and overall compliance as it relates to the delivery of information, including order tickets and confirmation statements, to all customers distributed via electronic means.

### Acceptance of Electronic Delivery

The designated principal should ensure that the Firm has obtained written consent to receive electronic documentation and information from each client who has chosen to use such a means. The designated principal is responsible to ensure that the customer consent form has been signed by the client and is maintained and preserved according to *SEC Rule 17a-4*.

All clients of the Firm who wish to discontinue receiving electronic documentation and information can cancel and receive hardcopy versions of the information. Any such cancellation and request to change the receipt of such records should be maintained and preserved pursuant to *SEC Rule 17a-4*. The designated principal is responsible to ensure that the firm's clients receive the required documentation in the form of their choice.

### Delivery Obligations

The designated principal will verify that the firm complies with the following electronic delivery requirements:

- All recipients are not burdened by the electronic medium used and that they can access the information effectively and efficiently;
- Verify that the Firm's customers who receive information electronically have access to the same or substantially similar information provided in paper form. The designated principal will further ensure that the electronically transmitted document must convey all relevant and required information;
- Offer clients the opportunity to retain the information through the electronic means or have the ability to access the same information on an ongoing basis;

- Provide timely and adequate notification to its customers that information is available in an electronic format as well as ensure that proper notification is given in more than one format (i.e. electronic and paper) if necessary to ensure adequacy;
- Verify that the transmitted information is delivered to the intended client.

**Evidence of Delivery**

The designated principal must confirm that the delivered information was conducted in compliance with all relevant federal, state and self-regulatory (SRO) rules and regulations. The firm should evidence satisfactory delivery of the information and documentation which may be achieved by implementing one or more of the following methods:

- Use of a customer service e-mail link included in the message for clients unable to access the transmitted information;
- Confirmation statements showing that a given user name and password accessed and downloaded or printed the information;
- Use of courtesy calls or courtesy letters to verify receipt;
- Use of electronic mail return receipt;

The designated principal is responsible for ensuring that the Firm evidences, maintains, and preserves proof that the information was properly delivered and received by the appropriate recipient.

**Delivery of Financial Information**

The firm may provide personal financial information, customer account statements or confirmations, to its clients in electronic form. However, the designated principal is responsible to ensure that the firm makes a reasonable effort to ensure the integrity, confidentiality, and security of the information. All information distributed through electronic means shall be reasonably secure from piracy, tampering, or alteration. Additionally, the firm must notify the client and obtain a written consent before transmitting the information. The client may make such consent by either manual signature or by electronic means. ►►

**Implementation Strategy**

Currently, the Firm does not deliver financial information electronically to clients. In the event, however, the Firms elects to deliver financial information to clients in electronic form, the designated principal will review and approve a representative sample of external electronic communications prior to use and/or distribution. All electronic communications will be electronically stored in an appropriately labeled file on the firm's network server. This server is backed up on a periodic basis and is stored via zip drive and/or CD and is maintained at the branch location. Only authorized personnel will have access to the back-up files. All electronic communications will be stored as evidence of maintenance.

## 7.13 Telemarketing Procedures/National Do-Not-Call Registry

**Requirements Specific to Telemarketing Activities**

In the event that the Firm engages in telemarketing activities, the Firm is prohibited from initiating any telephone solicitation to:

- Any residence of a person before the hours of 8 a.m. or after 9 p.m. (local time at the called party's location), unless it has received that person's prior consent, or the person called is a broker/dealer;
- Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or
- Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry

**National Do-Not-Call Registry**

The Firm and/or its associated persons are prohibited from making telephone solicitations to any person who registers his or her phone number on the national do-not-call registry. Registrations are maintained in the national registry for a period of five years. A consumer may re-register his or her telephone number at any time. Such re-registration re-commences the applicable five-year registration period.

**Exceptions from the National Registry Do-Not-Call Requirements**

Firms making telephone solicitations will not be liable for violating the policy if:

- The firm has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that firm even if the person continues to do business with the firm;
- The firm has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member which states that the person agrees to be contacted by the firm and includes the telephone number to which the calls may be placed; or
- The associated person making the call has a personal relationship with the recipient of the call.

The definition of "established business relationship" replaces the definition of "existing customer," which was applicable solely to the time-of-day restrictions and disclosure provisions in current Rule 2212. A firm may not call outside the time-of-day restrictions where an established business relationship is predicated on being the broker/dealer of record for an account of the person within the previous 18 months or having contacted the member to inquire about a product or service within the previous three months.

A person's request to be placed on a firm-specific do-not-call list terminates the established business relationship exception. Thus, a firm or associated person may not make telephone solicitations to a person with whom it has an established business relationship if such person requests to be placed on the firm's do-not-call list. Nothing in amended Rule 2212 prohibits the firm from contacting a customer solely concerning the administration of his or her account. Such calls do not constitute telephone solicitation or telemarketing.

**Safe Harbor Provision for the National Do-Not-Call Registry Requirements**

Firms and/or associated persons making telephone solicitations will not be liable for violating paragraph (a)(3) if the firm or associated person demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

- The firm has established and implemented written procedures to comply with the national do-not-call rules;
- The firm has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- The firm has maintained and recorded a list of telephone numbers that it may not contact; and
- Effective March 1, 2005, under amended Rule 2212(c)(4), a member relying on Rule 2212's safe harbor provision must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than **thirty-one (31) days** prior to the date any call is made, and must maintain records documenting this process.

**Telemarketing Procedures**

The SEC approved FINRA's proposed rule change to adopt NASD Rule 2212 (Telemarketing) as FINRA Rule 3230 (Telemarketing) in the consolidated rulebook (Consolidated FINRA Rulebook), taking into account certain requirements under NYSE Rule 440A (Telephone Solicitation) and its Interpretation. Further, the new rule adopts provisions that are substantially similar to Federal Trade Commission (FTC) rules that prohibit deceptive and other abusive telemarketing acts or practices. (Ref. Notice 12-17; effective date June 29, 2012)

NASD Rule 2212 and NYSE Rule 440A are similar rules that require member firms to maintain and consult do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The SEC directed FINRA and NYSE to adopt these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (Prevention Act). The Prevention Act requires the SEC to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices. In 2011, SEC staff directed FINRA to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are, in the SEC's view, at least as strong as those provided by the FTC's telemarketing rules.

**Caller Identification Information**

FINRA Rule 3230 includes caller identification information provisions similar to those contained in NYSE Rule 440A(h). These provisions provide that firms engaging in telemarketing must transmit caller identification information and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. Inclusion of these caller identification information provisions in the new rule does not create any new obligations on broker-dealers as they are already subject to identical provisions under FCC regulations.

**Maintenance of Do-Not-Call Lists**

FINRA Rule 3230(d)(6) maintains the requirement in NASD Rule 2212(d)(6) that a firm making an outbound telephone call must maintain a record of a caller's request not to receive further calls. However, the new rule eliminates the five-year window under which a firm must honor a firm-specific do-not-call request. SEC staff directed FINRA to delete this provision because the firm specific opt out period is indefinite under the FTC's Telemarketing Sales Rule, rather than five years as provided in NASD Rule 2212.

**Wireless Communications**

NASD Rule 2212(e) states that the provisions set forth in the rule are applicable to firms' telemarketing calls to wireless telephone numbers. FINRA Rule 3230(e) clarifies that the application of the rule also applies to persons associated with a firm making outbound telephone calls to wireless telephone numbers.

**Outsourcing Telemarketing**

NASD Rule 2212(f) states that if a firm uses another entity to perform telemarketing services on its behalf, the firm remains responsible for ensuring compliance with all provisions contained in the rule. FINRA Rule 3230(f) clarifies that firms must consider whether the entity or person that performs telemarketing services on its behalf must be appropriately registered or licensed, where required.

**Unencrypted Consumer Account Numbers**

FINRA Rule 3230(h) prohibits a firm or its associated person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The provision is substantially similar to the FTC's provision regarding unencrypted consumer account numbers. Additionally, the provision defines "unencrypted" as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The definition is substantially similar to the view taken by the FTC.

**Submission of Billing Information**

FINRA Rule 3230(i) requires, for any telemarketing transaction, a firm or its associated person to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves pre-acquired account information and a free-to-pay conversion feature, the firm or its associated person must: (1) obtain from the customer, at a minimum, the last four digits of the account number to be charged; (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number; and (3) make and maintain an audio recording of the entire telemarketing transaction. For any other telemarketing transaction involving pre-acquired account information, the firm or its associated person must: (1) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number. The rule is substantially similar to the FTC's provision regarding the submission of billing information.

**Abandoned Calls**

FINRA Rule 3230(j)(1) prohibits a firm or its associated person from abandoning any outbound telemarketing call. The abandoned calls prohibition is subject to a "safe harbor" under paragraph (j)(2), which provides that a firm or its associated person will not be liable for violating FINRA Rule 3230(j)(1) if: (1) the firm or its associated person employs technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues; (2) the firm or its associated person, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; (3) whenever an associated person is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the firm or its associated person promptly plays a recorded message stating the name and telephone number of the firm or associated person on whose behalf the call was placed; and (4) the firm retains records establishing compliance with the "safe harbor." The rule is substantially similar to the FTC's provisions regarding abandoned calls.

**Prerecorded Messages**

FINRA Rule 3230(k) prohibits a firm or its associated person from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement to receive such calls. The rule also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the "safe harbor" for abandoned calls under paragraph (j)(2). The rule is substantially similar to the FTC's provisions regarding prerecorded messages. (Ref. Notice 12-17; effective date June 29, 2012)

**Outsourcing Telemarketing Functions**

In the event that the Firm uses another entity to perform telemarketing services on its behalf, the Firm remains responsible for ensuring compliance with all provisions contained in the rule. If unregistered persons are used for telemarketing purposes, such unregistered persons may only contact prospective customers to: (1) extend invitations to firm-sponsored events; (2) inquire whether the customer wishes to discuss investments with a registered person; and (3) inquire whether the customer wishes to receive investment literature in accordance with applicable Rules. (NTM 04-15; Effective March 31, 2004)

**Soliciting Business in Foreign Jurisdictions**

In accordance with *NTM 98-91*, the Firm understands its obligations concerning cold calling and advertising to persons in the United Kingdom. When considering cold calling or advertising in any foreign jurisdiction, the Firm will ensure that such activities comply with all applicable U.S. laws and foreign laws. ►►

**Implementation Strategy**

The designated principal will be responsible for establishing and maintaining a *centralized* do-not-call list of persons who do not wish to receive telephone solicitations on behalf of the Firm. All associated personnel are required to notify the main office for updating the do-not-call list any time an individual asks not to be contacted or asks to be removed from a phone solicitation list.

## 7.14 Taping Rule

The adoption of the Taping Rule was designed to ensure that firms that hire a significant number of registered persons from firms that have been expelled from membership or participation by any SRO or have had their registrations revoked by the SEC for sales practice violations ("disciplined firms") have proper supervision and oversight of their sales force to prevent fraudulent and improper sales practices.

In accordance with the Taping Rule under FINRA Rule 3170, the Firm will supervise the telemarketing activities of all of its registered persons if the Firm is either is notified by FINRA Regulation or has actual knowledge that it meets one of the following:

- The Firm has at least twenty registered persons, where 20% or more of its registered persons have been employed by one or more Disciplined Firms within the last three years;
- The Firm has at least ten but fewer than twenty registered persons, where four or more of its registered persons have been employed by one or more Disciplined Firms within the last three years; and

- The Firm has at least five but fewer than ten registered persons, where 40% or more of its registered persons have been employed by one or more Disciplined Firms within the last three years;

If the Firm meets any one of the criteria above, the Firm will tape-record all telephone conversations between registered persons and both existing and potential customers for a period of at least two (2) years from the date that the Firm establishes it meets one of the criteria. All tape recordings made will be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. All recordings will be cataloged by registered person and date. By the 30th day of the month following the end of each calendar quarter, the Firm will submit a report FINRA regarding the Firm's supervision of the telemarketing activities of its registered persons.

In accordance with FINRA Rule 3170(a)(4), the term "tape recording" includes without limitation, any electronic or digital recording that meets the requirements of this Rule.

**Supervisory Procedures Regarding the Tape Recording of Conversation**

In accordance with FINRA Rule 3170:

> (1) Each member that either is notified by FINRA or otherwise has actual knowledge that it is a taping firm shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.
>
> (2) A taping firm required to establish, maintain, and enforce special written procedures pursuant to this paragraph must establish and implement the procedures within 60 days of receiving notice from FINRA or obtaining actual knowledge that it is a taping firm.
>
> (3) The procedures shall include procedures for tape recording all telephone conversations between the taping firm's registered persons and both existing and potential customers and for reviewing the tape recordings to ensure compliance with applicable securities laws and regulations and applicable FINRA rules. The procedures must be appropriate for the taping firm's business, size, structure, and customers, and shall be maintained for a period of three years from the date that the taping firm establishes and implements the procedures.
>
> (4) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each taping firm shall catalog the retained tapes by registered person and date.
>
> (5) By the 30th day of the month following the end of each calendar quarter, each taping firm subject to the requirements of this paragraph shall submit to FINRA a report on the taping firm's supervision of the telemarketing activities of its registered persons.

**Opt-Out Provision**

The Taping Rule under FINRA Rule 3170 permits firms that become subject to the Rule for the first time a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule (often referred to as the "opt out provision"). A firm that elects this one-time option must reduce its staffing levels to fall below the applicable threshold levels within 30 days after receiving notice from FINRA or obtaining actual knowledge that it is subject to the provisions of the Rule. Once a firm has made the reductions, the firm is not permitted to rehire the terminated individuals for at least 180 days.

**Exemption Requests**

FINRA also has the authority to grant exemptions from the Rule in “exceptional circumstances.” In reviewing exemption requests, FINRA generally has required a firm to establish that it has alternative procedures to assure supervision at a level functionally equivalent to a taping system.

In accordance with FINRA Rule 3170(d), firms that are seeking an exemption from the Rule must submit their exemption requests to FINRA within 30 days of receiving notice from FINRA or obtaining actual knowledge that they are subject to the provisions of the Rule. The amendments also clarify that firms that trigger application of the Taping Rule for the first time can elect to either avail themselves of the one-time “opt out provision” or seek an exemption from the Rule, but they may not seek both options. (FINRA Notice 14-10; effective December 1, 2014) ►►

**Implementation Strategy**

The Firm does not intend to employ any registered persons from any firm that have been expelled from membership or participation by any SRO or have had their registrations revoked by the SEC for sales practice violations (otherwise known as “disciplined firms”).

## 7.15 Limitations on Use of FINRA’s Name

FINRA member Broker/dealers may indicate or otherwise disclose FINRA membership so long as such disclosure is in accordance with Article XV, Section 2 of FINRA By-Laws in one or more of the following ways:

in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that FINRA or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security; or
in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with FINRA Uniform Practice Code." ►►

**Implementation Strategy**

The designated supervisor will constantly monitor advertisements, sales literature and correspondence or other communication with the public to ensure that any indication of FINRA membership does NOT imply endorsement or indemnification on the part of a regulatory organization, or any guaranteed compliance or approval of business practices, sales methods or securities offered through the Firm. Any such findings will be immediately investigated and resolved in a timely manner. Any person found in violation of FINRA Rules limiting the use of FINRA’s name or other internal policies relating to this matter may receive disciplinary action up to termination.

## 7.16 Disclosure of Financial Condition to Customers

In accordance with FINRA Rule 2261 (formerly NASD Rule 2270), broker/dealers shall make available to inspection by any bona fide regular customer, upon request, the information relative to such firm's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such firm's usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder. ►►

**Implementation Strategy**

Upon request by a customer (where such customer in the regular course of the Firm's business, has cash or securities in the possession of the Firm), the designated supervisor will provide such customer with information relative to the Firm's financial condition as disclosed in its most recent balance sheet prepared in accordance with the Firm's usual practice and/ as required by state or federal securities laws, or applicable rules or regulations.

## 7.17 Senior Designations and Credentials

FINRA is concerned about the proliferation of professional designations, particularly those that suggest an expertise in retirement planning or financial services for seniors, such as "certified senior adviser," "senior specialist," "retirement specialist" or "certified financial gerontologist." The criteria used by organizations that grant professional designations for investment professionals vary greatly. Some designations require formal certification, with procedures that include completion of a detailed and rigorous curriculum focused on financial issues, culminating with one or more examinations, as well as mandatory continuing professional education. On the other end of the spectrum, some designations can be obtained simply by paying membership dues. Nonetheless, seniors may be led to believe that these individuals are particularly qualified to assist them based on such designations.

Firms that allow the use of any title or designation that conveys an expertise in senior investments or retirement planning where such expertise does not exist may violate FINRA Rule 2010 (formerly NASD Rule 2110) and Rule 2210, and possibly the antifraud provisions of the federal securities laws. In addition, some states prohibit or restrict the use of senior designations. (Ref. Regulatory Notice 07-43; Issued Sept. 10, 2007) ►►

**Implementation Strategy**

The Firm does not permit the use of any title or designation that may convey an area of expertise in senior investments or retirement planning where such expertise does not exist.

*Note: Nebraska prohibits the use of senior designations, while Massachusetts permits the use of designations only if they have been approved by an independent accreditation agency. See Interpretative Opinion No. 26: Use of Certifications and Designations in Advertising by Investment Adviser Representatives and Broker-Dealer Agents, Special Notice of the Nebraska Department of Banking and Finance (November 13, 2006), available at www.ndbf.org/forms/bd-ia-specialnotice. pdf. The Massachusetts regulations became effective June 1, 2007. See 950Mass. Code Regs. 12.204(2)(i) (2007) (Registration of Broker-Dealer, Agents, Investment Adviser, Investment Adviser Representatives and Notice Filing Procedures), and the Notice of Final Regulations, available at www.sec.state.ma.us/sct/sctpropreg/propreg.htm.*

## 7.18 SIPC Disclosure

It is the responsibility of a designated supervisor to ensure that the Firm, as a member of SIPC, continuously displays, in a prominent place, the official symbol (as prescribed in Article 11, Section 4(a)(6)) at its principal place of business and at each branch office. In addition, except as provided in Article 11, Section 4(d), (e), and (g)(2), the Firm shall include in all advertising (as defined in Article 11, Section 4 (a)(1)) a reproduction of the official symbol or the official advertising statement or the official explanatory statement (as defined in Article 11, Section 4(a)(6), (a)(4), (a)(5), respectively). Furthermore, when the official symbol is used on the Internet, "SIPC" shall contain a hyperlink to SIPC's website. The following is a list of some of definitions as set forth in Article 11, Section 4 of Section 10(d) of the Act.

- Advertising -The term "advertising" as used in this Section shall mean promotional material used in or on any newspaper, magazine, or other periodical, radio, television, telephone or tape recording, videotape display, motion picture, slide presentation, telephone directory, sign or billboard, electronic or other public media.

- Branch Office - The term "branch office" as used in this Section shall mean any office of a member which is registered with or designated as a branch office with any self-regulatory organization.

- Official Brochure - The term "official brochure" as used in this Section shall mean any publication so designated by the Corporation which explains the purposes of the Corporation and the protections it affords and which is authorized for public distribution.

- Official Advertising Statements - this Section shall be "Member of the Securities Investor Protection Corporation." The word "the" or the words "of the" may be omitted. The words "This firm is a" may be added before the word "member." The short title "Member of SIPC" or "Member SIPC" may be used by members at their option as the official advertising statement. When the official advertising statement is used on the Internet, the words "Securities Investor Protection Corporation" and "SIPC" shall contain a hyperlink to SIPC's website.

- Official Explanatory Statement - The term "official explanatory statement" as used in this Section shall be either: (1) "Member of SIPC, which protects securities customers of its members up to $500,000 (including $100,000 for claims for cash). Explanatory brochure available upon request or at www.sipc.org." or (2) "Member of SIPC. Securities in your account protected up to $500,000. For details, please see www.sipc.org." The words "Member of SIPC" may be omitted if the official explanatory statement is used in conjunction with the official symbol. When the official explanatory statement is used on the Internet, "SIPC" and "www.sipc.org" shall contain a hyperlink to SIPC's website.

- Official Symbol - The term "official symbol," which may be displayed in a variety of sizes, colors or materials, shall be of the following design:


When the symbol is so reduced in size that the words "member" and "Securities Investor Protection Corporation" are illegible, these words may be omitted. When the official symbol is used on the Internet, "SIPC" shall contain a hyperlink to SIPC's website. ▶▶

**Implementation Strategy**

The designated supervisor will ensure that the Firm is operating according to SIPC requirements. Specifically, the Firm will continuously display in a prominent place the official symbol at its principal place of business and at each designated branch office location. In addition, except as provided in Article 11, Section 4(d), (e), and (g)(2), the Firm shall include in all advertising a reproduction of the official symbol or the official advertising statement or the official explanatory statement. Furthermore, when the official symbol is used on the Internet, "SIPC" shall contain a hyperlink to SIPC's website.

## 7.19 Educational Communication Related to Recruitment Practices and Account Transfers

The SEC approved the adoption of FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers), which establishes an obligation to deliver an educational communication in connection with firm recruitment practices and account transfers.

The rule requires a firm that hires or associates with a registered representative to provide to a former customer of the representative, individually, in paper or electronic form, an educational communication prepared by FINRA.

The rule requires delivery of the educational communication when:

- the firm, directly or through a representative, individually contacts a former customer of that representative to transfer assets; or
- a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the firm.

**Important Considerations**

To facilitate uniform communication under the rule and to minimize the burden on firms in providing the communication to former customers of a representative, the rule requires firms to provide the FINRA-created communication, in paper or electronic form, and does not permit firms to use an alternative format.

The educational communication focuses on important considerations for a former customer who is contemplating transferring assets to an account assigned to his or her former representative at the recruiting firm. The educational communication highlights the following potential implications of transferring assets to the recruiting firm:

- whether financial incentives the representative receives may create a conflict of interest;
- that some assets may not be directly transferrable to the recruiting firm and as a result the customer may incur costs to liquidate and move those assets or incur account maintenance fees to leave them with his or her current firm;
- potential costs related to transferring assets to the recruiting firm, including differences in the pricing structure and fees the customer's current firm and the recruiting firm impose; and
- differences in products and services between the customer's current firm and the recruiting firm.

**Requirement to Deliver Educational Communication**

The rule intends for a broad range of communications by a recruiting firm or its registered representative to constitute individualized contact that would trigger the delivery requirement. These communications may include, but are not limited to, oral or written communications by the transferring representative:

- informing the former customer that he or she is now associated with the recruiting firm;
- suggesting that the former customer consider transferring his or her assets or account to the recruiting firm;
- informing the former customer that the recruiting firm may offer better or different products or services; or
- discussing with the former customer the fee or pricing structure of the recruiting firm.

Furthermore, FINRA would consider oral or written communications to a group of former customers to similarly trigger the requirement to deliver the educational communication under the rule. These types of oral or written communications by a firm, directly or through the representative, to a group of former customers may include, but are not limited to:

- mass mailing of information;

- sending copies of information via email; or
- automated phone calls or voicemails.

**Timing and Means of Delivery of Educational Communication**

The rule requires a firm to deliver the educational communication at the time of first individualized contact with a former customer by the firm, directly or through the representative, regarding the former customer transferring assets to the firm.

| Method of Communication | Delivery Method |
|---|---|
| Verbal | If the first individualized contact with the former customer is verbal, the rule requires the firm or representative to notify the former customer verbally that an educational communication that includes important considerations in deciding whether to transfer assets to the firm will be provided not later than three business days after the contact. |
| Written | Educational communication must accompany the written communication |
| Electronic | The firm is permitted to include a hyperlink directly to the educational communication |
| No Contact | If there is no individualized contact with the former customer by the representative or firm occurs before the former customer seeks to transfer assets, the rule mandates that the firm deliver the educational communication to the former customer with the account transfer approval documentation. |

The educational communication requirement in the rule applies for a period of three months following the date that the representative begins employment or associates with the recruiting firm.

The educational communication requirement would not apply when the former customer expressly states that he or she is not interested in transferring assets to the firm. If the former customer subsequently decides to transfer assets to the firm without further individualized contact within the period of three months following the date that the representative begins employment or associates with the firm, then the educational communication is required to be provided with the account transfer approval documentation. (Ref: FINRA Regulatory Notice 16-18; May2016; Effective Date: Nov. 11, 2016) ►►

**Implementation Strategy**

In the event that the Firm hires or associates with a registered representative who wishes to notify clients for the purposes of transferring such client accounts to the Firm, the designated supervisor will ensure that it meets all notification and delivery requirements as specified above based on the method and delivery of communication. More specifically, the designated supervisor will ensure that the FINRA-created educational communication (see Attachment B of Notice 16-18- Issues to consider when your broker changes firms) that includes important considerations in deciding whether to transfer assets to the firm will be provided not later than three business days after the contact.