

# Chapman Client Alert

June 2, 2016

Current Issues Relevant to Our Clients

## FINRA Proposes Amendments to Rules Governing Communications with the Public

The Financial Industry Regulatory Authority, Inc. (“FINRA”) recently filed proposed changes to certain aspects of the FINRA rules governing member firms’ communications with the public. The proposed rule changes are substantially similar to those proposed by FINRA in May 2015 described in our Client Alert available [here](#). The proposed amendments would revise certain filing requirements of FINRA Rules 2210 (Communications with the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings) and 2214 (Requirements for the Use of Investment Analysis Tools). The proposed amendments would, among other things, reduce the amount and types of retail communications required to be filed with FINRA. In addition, the proposed amendments would change certain pre-use filing requirements to post-use filing requirements. A copy of FINRA’s filing with the Securities and Exchange Commission (the “SEC”) is available [here](#).

### New Firm Communications

Under existing FINRA rules, a new FINRA member is generally required to file retail communications with FINRA at least ten business days prior to use for the first year of a member firm’s membership. FINRA believes it can continue to protect investors from potential harm by reviewing new members’ communications on a post-use, rather than pre-use basis.

Accordingly, FINRA proposes to revise the new member filing requirement to require new members to file with FINRA retail communications used in electronic or other public media within ten business days of first use for a one-year period, rather than requiring these filings at least ten days prior to use.

### Investment Company Shareholder Reports

Under existing FINRA rules, members are required to file the manager discussion of fund performance portion of a registered investment company’s shareholder report if the report is distributed or made available to prospective investors. FINRA proposes to eliminate this filing requirement for any manager discussions of fund performance included in an annual or semi-annual shareholder report that has been filed with the SEC.

### Offering Documents Concerning Unregistered Securities

Existing FINRA rules currently exclude from filing requirements issuer-prepared offering documents concerning securities offerings exempt from registration (e.g., prospectuses, fund profiles, offering circulars, etc.). FINRA is proposing to amend the existing rules to eliminate ambiguity and make clear that

the exclusion applies to offering documents concerning securities offerings exempt from SEC or state registration requirements. FINRA has indicated that it does not believe this amendment will represent a substantive change to the current filing exclusion for unregistered securities’ offering documents.

### Backup Material for Investment Company Performance Rankings and Comparisons

Firms that file a retail communication for a registered investment company that contains a fund performance ranking or performance comparison are currently required to include a copy of the ranking or comparison used in the retail communication. FINRA is now proposing to eliminate this filing requirement and instead require firms to maintain a back-up of these materials as part of their records.

### Generic Investment Company Communications

Firms are currently required to file retail communications “concerning” registered investment companies within ten business days of first use. FINRA proposes to eliminate the filing requirements for generic investment company retail communications that do not promote a particular fund or fund family. For example, these would include a communication that describes different mutual fund types and features but does not discuss the benefits of a specific fund or fund family.

### Investment Analysis Tools

Firms are currently required to file templates of written reports produced by or retail communications concerning “investment analysis tools” within ten days of first use if offering the investment analysis tool publicly. These are interactive tools

that produce simulations and statistical analyses based on hypothetical investment decisions. FINRA also requires access to any such tool. In light of the investor protections provided by FINRA's access to such tools under existing provisions and other content standards, FINRA proposes to eliminate the filing requirements related to investment analysis tools and retail communications concerning such tools and instead only require members to provide FINRA staff with access to investment analysis tools upon request.

### Expansion of Filing Exclusion for Templates

Under existing FINRA rules, members are not required to file retail communications that are based on previously filed communications and updated only with statistical or other non-narrative information. FINRA proposes to expand this exclusion to allow firms to include updated non-predicative narrative descriptions of market events during the period covered by the communication, factual descriptions of portfolio changes and updated information that is sourced from a registered investment company's regulatory documents filed with the SEC without having to refile the template with FINRA.

### Bond Mutual Fund Volatility Ratings

Members are currently required to file retail communications that include bond mutual fund volatility ratings at least ten days prior to first use and withhold such communications from publication or circulation until any changes specified by FINRA have been made. Current FINRA rules also require that such communications be accompanied or preceded by a fund's

prospectus and contain specific disclosures. FINRA proposes to permit firms to use such communications provided they are filed within ten days of first use and eliminate the requirement that such communications be accompanied or preceded by the bond fund's prospectus. In addition, the proposed amendments would eliminate the requirements: (1) that all disclosures be contained in a separate disclosure statement; (2) to disclose all current bond mutual fund volatility ratings that have been issued with respect to the fund; (3) to explain the reason for any change in the current rating from the most recent prior rating; (4) to describe the criteria and methodologies used to determine the rating; (5) to include a statement that not all bond funds have volatility ratings; and (6) to include a statement that the portfolio may have changed since the date of the rating.

### What's Next?

It is expected that the SEC will issue a release requesting public comment on FINRA's proposed rule changes. Assuming the SEC approves the proposed rule changes, FINRA will announce the implementation date in a Regulatory Notice published within 60 days after the SEC's approval and the effective date will be no later than 180 days following that publication.

### For More Information

To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group or visit us online at [chapman.com](http://chapman.com).

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