

FINRA Revises Proposed Rules on Communications with the Public (Amendment No. 2)

Over the course of the last few years, the Financial Industry Regulatory Authority, Inc. (“FINRA”) has proposed changes to the rules governing broker-dealer communications with the public. After receiving significant comments on earlier proposals, FINRA recently filed Amendment No. 2 to the proposed rule changes and a rebuttal letter regarding the comments received. The SEC now seeks public comment on Amendment No. 2 and FINRA’s rebuttal letter. The SEC release is available at <http://www.sec.gov/rules/sro/finra/2011/34-66049.pdf>. For details on the prior proposals, please refer to the following Client Alerts:

- Original FINRA Regulatory Notice (09-55) Proposal—<http://www.chapman.com/media/news/media.728.pdf>
- July 2011 FINRA Proposal Filed with the SEC—<http://www.chapman.com/media/news/media.1049.pdf>
- November 2011 Amendment No. 1 to Proposal—<http://www.chapman.com/media/news/media.1098.pdf>

Amendment No. 2 Key Issues

This section discusses some of the key issues addressed by Amendment No. 2.

Internal Communications Excluded from “Institutional Communication” Definition—FINRA amended proposed FINRA Rule 2210 and related proposed Supplementary Material to exclude from the definition of “institutional communication” a member’s internal communications. FINRA believes that other existing rules address the key supervisory review and content standards for internal communications. On a related matter, FINRA did not make changes to the definition of “institutional investor” in proposed FINRA Rule 2210.

Social Media Excluded from Filing Requirement—FINRA amended proposed FINRA Rule 2210(c)(7) to exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. Although FINRA is now excluding these communications from the filing requirements, FINRA did not agree that participation in an online interactive electronic forum is analogous to a “public appearance” and, as previously proposed, FINRA

will not retain the “public appearance” communications category.

Closed-End Fund Press Releases Excluded from Filing Requirement—FINRA also amended proposed FINRA Rule 2210(c)(7) to exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the New York Stock Exchange pursuant to section 202.06 of the NYSE Listed Company Manual. Certain commenters requested that FINRA also exclude other closed-end fund retail communications from the filing requirement but FINRA was not persuaded to do so.

Broker-Prepared Free-Writing Prospectus Filing Allowed Post-Use for New Members—FINRA amended proposed FINRA Rule 2210(c)(1)(A) to allow a member that is subject to the new member pre-use filing requirements to file a broker-prepared free writing prospectus that has been filed with the SEC pursuant to Rule 433(d)(1)(ii) under the Securities Act of 1933 within 10 business days of first use. The prior proposal would have required pre-filing at least 10 business days *prior to* first use.

Submitting Comments

You may submit comments on the new proposal until January 18, 2012, by submitting a hard copy, by sending an email to rule-comments@sec.gov with “SR-FINRA-2011-035” in the subject line, or online at [this link](#).

If you would like to discuss any of the issues discussed in this Client Alert, please contact any attorney in our Investment Management Group or visit us online at chapman.com.

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© Chapman and Cutler LLP, 2012. All Rights Reserved.