



July 2, 2015

By Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Regulatory Notice 15-16: FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide comment on a proposed rule by the Financial Industry Regulatory Authority (“FINRA”) to amend various aspects of FINRA’s rules governing communications with the public.²

I. INTRODUCTION & BACKGROUND

On May 18, 2015, FINRA, in Regulatory Notice 15-16 (“RN 15-16”), proposed amendments to FINRA rules governing communications with the public. On May 22, 2015, FINRA issued guidance in the form of frequently-asked-questions on the same set of rules (the “Communications FAQs”).³ RN 15-

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See generally FINRA Regulatory Notice 15-16 (May 18, 2015) (available at: http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-16.pdf) [last visited July 1, 2015].

³ See generally FINRA Regulatory Notice 15-17 (May 22, 2015) (available at: <http://www.finra.org/industry/finra-rule-2210-questions-and-answers>) [last visited July 1, 2015].

16 and the Communications FAQs are the result of a retrospective rule review that FINRA began in April 2014.⁴

In RN 15-16, FINRA generally is proposing to:

- Amend FINRA Rule 2210 so that firms that are in their first year of FINRA membership will only have to file the contents of their website and any material changes to the site within ten (10) business days of first use.⁵
- Exclude shareholder reports filed with the SEC from the registered investment company filing requirements.
- Eliminate the requirement to file registered investment company ranking and comparison backup material.
- Exclude from the registered investment company filing requirements generic investment company retail communications that do not promote a particular fund or fund family.
- Exclude from the registered investment company filing requirements updated non-predictive narrative descriptions of market events during the period covered by the communication and factual descriptions of portfolio changes.
- Eliminate the requirement that firms file their investment analysis tool templates.
- Amend FINRA Rule 2213 so that retail communications relating to bond mutual funds that include ratings provided by independent third parties and other communications will no

⁴ See generally FINRA Regulatory Notice 14-14 (April 2014) (available at: <https://www.finra.org/sites/default/files/NoticeDocument/p479810.pdf>) [last visited June 30, 2015] and FINRA Retrospective Rule Review Report: Communications with the Public (Dec. 2014) (available at: <http://www.finra.org/sites/default/files/p602011.pdf>) [last visited June 30, 2015].

⁵ FINRA rules currently require such firms to file all of their retail communications with the public. See FINRA Rule 2210.

longer need to be accompanied or preceded by the fund's prospectus or contain specific disclosures.

- Permit firms to file retail communications that relate to bond mutual fund volatility ratings within ten (10) business days of first use, rather than prior to first use.

II. EXECUTIVE SUMMARY

In this section of the comment letter, SIFMA summarizes some of its general comments on RN 15-16. A detailed discussion of each of these issues is included in the various sections of this comment letter.

- ***Retrospective Rule Review***: SIFMA commends FINRA for undertaking FINRA's retrospective rule review. SIFMA encourages FINRA to continue to review its rulebook and interpretations and to solicit member firm feedback on the function, operation, and purpose of FINRA's rules and interpretations.
- ***Proposals Included in RN 15-16***: SIFMA supports the amendments proposed in RN 15-16. SIFMA believes the proposed amendments will make FINRA's communications with the public rules less burdensome to the industry and more beneficial to investors by, among other things, eliminating unnecessary and duplicative filing requirements and leveraging information that is already available.
- ***Additional Suggested Changes***: While SIFMA supports the amendments proposed in RN 15-16, SIFMA believes an additional amendment to these rules and interpretations would further the underlying purpose of the rules while also making compliance with the rules less costly. As explained in greater detail in Section V of this comment letter, SIFMA suggests one additional change to FINRA Rule 2210(d)(1)(C) regarding the use of legends and footnotes relating to mobile devices.

III. FINRA'S RETROSPECTIVE RULE REVIEW

In April 2014, FINRA began a retrospective review of its communications with the public rules.⁶ During the review process, FINRA met with and solicited feedback from a broad range of interested parties, including member firms. In December 2014, FINRA published a report on the assessment phase of the communications with the public rule review (the "Communications Rules Review Report").⁷ FINRA's report noted, among other things, "that the rules and FINRA's administration of them may benefit from some updating and recalibration to better align the investor protection benefits and the economic impacts."⁸ SIFMA understands that the proposals included in RN 15-16 and the Communications FAQs are a direct result from the suggestions included in the Communications Rules Review Report.

SIFMA would like to commend FINRA for undertaking FINRA's retrospective rule review. SIFMA encourages FINRA to continue to review its rulebook and interpretations and to solicit member firm feedback on the function, operation, and purpose of FINRA's rules and interpretations. As investors, technology, and the industry change, rules and interpretations should be re-evaluated to ensure they are still relevant and meet their underlying investor protection mandates in a cost effective and efficient manner. Outdated and inefficient rules and interpretations do not benefit anyone, particularly not investors who ultimately may bear the burden of the increased costs and inefficiencies in these rules.

IV. PROPOSALS INCLUDED IN RN 15-16

As noted above, the various proposals in RN 15-16 would reduce certain filing requirements under FINRA's communications with the public rules "where

⁶ See generally Regulatory Notice 14-14 (April 8, 2014) (available at: <http://www.finra.org/sites/default/files/NoticeDocument/p479810.pdf>) [last visited on July 1, 2015].

⁷ See generally FINRA Retrospective Rule Review Report: Communications with the Public (Dec. 2014) (available at: <http://www.finra.org/sites/default/files/p602011.pdf>) [last visited on July 1, 2015].

⁸ See *id.* at 12.

the investor protection benefits may not align with the associated economic costs.”⁹

SIFMA agrees that the proposed exclusions and streamlining of filing requirements would reduce the costs associated with such filings without diminishing investor protection. SIFMA strongly supports these and other efforts by FINRA to address opportunities to better align the protections to investors with the associated risks of the activities and the costs of compliance.

V. *ADDITIONAL SUGGESTED AMENDMENTS TO THE COMMUNICATIONS WITH THE PUBLIC RULES & INTERPRETATIONS*

A. FINRA Rule 2210(d)(1)(C) – Content Standards/Legends & Footnotes

FINRA Rule 2210(d)(1) applies various general content standards to member firm communications with the public. Rule 2210(d)(1)(C), in particular, provides that “[i]nformation 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.”

SIFMA suggests that FINRA explicitly state that firms may use layered disclosure approaches for risk disclosures displayed on mobile and other similar small-form factor devices. FINRA should explicitly acknowledge the use of new techniques in the design and display of disclosures because of space limitations on mobile and other wearable technology devices. SIFMA believes this is best suited for the section of the rule (or applicable guidance) relating to the reference to footnotes and legends in 2210(d)(1)(C). This approach also aligns with FINRA’s statement in footnote 4 of RN 15-16 that “FINRA is considering whether to propose additional changes to Rule 2210 in response to . . . comments [related to the standards governing online, mobile and social media communications]”.¹⁰

⁹ See RN 15-16 at 5.

¹⁰ *Id.* at 8 n.4.

Ms. Marcia E. Asquith

July 2, 2015

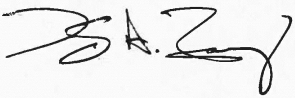
Page 6 of 6

VI. CONCLUSION

SIFMA thanks FINRA for the opportunity to comment on FINRA's proposed amendments to the rules governing communications with the public. Subject to the comments included in this letter, SIFMA supports the proposed amendments included in Regulatory Notice 15-16. SIFMA commends FINRA for undertaking its retrospective rule review and, in particular, using the feedback received pursuant to that review to draft and propose the amendments included in Regulatory Notice 15-16.

If you have any questions or require further information, please contact Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA at (202) 962-7386 (kzambrowicz@sifma.org), or Stephen Vogt, Assistant Vice President & Assistant General Counsel, SIFMA at (202) 962-7393 (svogt@sifma.org).

Very truly yours,



Kevin Zambrowicz
Associate General Counsel &
Managing Director



Stephen Vogt
Assistant Vice President &
Assistant General Counsel

Cc: Evan Charkes, Co-Chair, SIFMA Compliance & Regulatory Policy
Committee
Pamela Root, Co-Chair, SIFMA Compliance & Regulatory Policy
Committee