Public Investors Arbitration Bar Association

November 16, 2009

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: Regulatory Notice 09-55
Proposed Rules regarding Communications with the Public

Dear Ms. Asquith:

Thank you for the opportunity to comment on the above-referenced proposal to amend NASD Rules 2210 and 2211 regarding communications with the public. I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA generally supports the proposed revisions to these rules.

PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in FINRA rules relating to the communications that are made to the general investing public.

First, the proposed rules generally appear to be same as the current rules with respect to the requirement that an appropriately qualified registered principal of the firm approve the newly defined "retail communications" before it use or filing with FINRA. PIABA supports the continued use of these rules.

However, one concern arises from Proposed Rule 2210(b)(1)(D), which "clarifies" that this principal approval requirement is not needed for those communications that are "solely administrative in nature." PIABA has some concern that this will allow some firms to find and create a loophole to avoid approval for certain communications. PIABA hopes that FINRA will adequately define what would constitute something that is "solely administrative in nature."

PIABA also supports the proposed rules which provide record-keeping requirements that mirror the Securities Exchange Act Rule 17a-4.

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The proposed filing requirements generally appear to be the same as the current rules, with one main difference – that the filing requirements apply to all retail communications, not just advertisements as under the current scheme. Proposed rule 2210(c)(2) also expands the category of communications that fall within the pre-use filing requirements, including self-created rankings, retail communications regarding CMOs and security futures, communications regarding bond mutual fund volatility ratings, and communications concerning derivatives and structured products. PIABA supports both of these rule changes.

Another major change involves retail communications related to closed-end investment companies and funds. The proposed rule requires firms to file all retail communications concerning closed-end funds within 10 days of use, including those used after the IPO (the current rules only apply to communications used at the IPO). Again, PIABA supports this change.

Once more, FINRA exempts filing requirements for retail communications that are "solely administrative in nature." Again, no definitions of what is "solely administrative in nature" are provided, and PIABA hopes that FINRA would provide some adequate definition.

The content standards for communications are similar to what was used before. PIABA supports the continued use of these standards.

One of the few areas where FINRA is requiring less disclosure involves interested partners, officers, and firms. Under the current rules, a firm would be required to provide disclosure if the firm, officers, or partners have a financial interest in the securities of the recommended issuer. However, the proposed rules only requires disclosure "if the firm or any associated person with the ability to influence the substance of the communication has a financial interest in the recommended issuer." This would substantially narrow the number of parties whose financial interests have to be disclosed, particularly for large firms with numerous officers and partners. Less disclosure is always a concern for the public investor.

With a few exceptions as noted above, PIABA supports most of the rule changes that have been proposed concerning communications with investors. Once more, we appreciate the opportunity to comment on these proposed rule changes.

Very truly yours,

Scott R. Shewan
President

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