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Member FINRA/SIPC

July 1, 2015

**Via E-mail:** *pubcom@finra.org*

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

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

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposed Amendments to Rules Governing Communications with the Public, set forth in Regulatory Notice 15-16 (the “Proposal”).<sup>1</sup>

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo &

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<sup>1</sup> Regulatory Notice 15-16, Communications with the Public – FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public (May 2015).

[http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Notice\\_15-16.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-16.pdf)

<sup>2</sup> Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

## **I. BACKGROUND**

In April 2014, via Regulatory Notice 14-14 (“Notice”), FINRA launched a retrospective rule review<sup>3</sup> of its communications with the public rules to assess their effectiveness and efficiency. WFA, along with other industry participants, submitted comments requesting that FINRA clarify a number of these rules as well as re-evaluate many of their communication filing requirements. We recognize that the Proposal contains a number of rule amendments in response to these comments. Specifically, these amendments exclude or eliminate a number of filing requirements contained within FINRA Rule 2210(c) which had become duplicative and/or unnecessary. For example, the filing requirements for investment analysis tool report templates and exclusion of generic investment company retail communications that do not promote a particular fund or fund family have been eliminated.

## **II. WFA SUPPORT OF THE PROPOSAL**

WFA applauds FINRA’s efforts to ensure their rules continue to operate effectively and meet their intended objectives by undertaking this retrospective review of its rules and commends FINRA for issuing this Proposal. WFA strongly supports the proposed amendments contained in the Proposal, which contains several improvements to the rules.

FINRA has requested specific comment for the potential impact and cost assessment the Proposal may have on the respective Member. WFA does not believe the Proposal will result in increased costs; rather, the exclusion or elimination of certain filings will likely decrease costs. WFA does not anticipate a need to alter its delivery method or the content of their communications with the public material in order to comply with the Proposal, nor does WFA believe that FINRA needs to consider alternative approaches in order to accomplish the goals outlined within the Proposal. WFA will continue to voluntarily file communications as necessary and believes compliance with FINRA’s communications with the public rules will be less burdensome for industry participants while retaining investor protection.

## **III. OPPORTUNITY FOR ADDITIONAL CLARIFICATION**

WFA requests consideration of the following items to provide further clarification of the FINRA communications with the public rules to add to their effectiveness:

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<sup>3</sup> Regulatory Notice 14-14 Retrospective Rule Review – FINRA Requests Comment on the Effectiveness and Efficiency of its Communications with the Public Rules.

<http://www.finra.org/sites/default/files/NoticeDocument/p479810.pdf>

**A. Revise FINRA Rule 2210(d)(1)(F)**

FINRA Rule 2210(d)(1)(F) prohibits communications that predict or project performance. This is inconsistent with the SEC investment adviser standard promulgated under Rule 206(4)-1 of the Investment Advisors Act of 1940. The SEC standard permits predictions and projections which have a reasonable basis and an adequate explanation of any assumptions underlying the predictions. WFA believes the prohibition in 2210(d)(1)(F) is unduly restrictive and can prevent customers from receiving necessary information to assess and compare products. WFA suggests revising 2210(d)(1)(F) to align with Rule 206(4)-1.

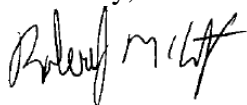
**B. Clarify the requirements for public appearances by associated persons in FINRA Rule 2210(f)(3)**

In FINRA Rule 2210(f)(3), FINRA explains the firm's public appearance procedures "must provide for the education and training of associated persons who make public appearances..." The Rule, however, does not define what constitutes a "public appearance." WFA feels that without a clear understanding of what constitutes a public appearance, it is difficult to determine which events fall under the scope of this Rule. Further, the Rule is specifically applicable to "associated persons." WFA seeks clarification on what constitutes an "associated person" for purposes of the education and training requirements. Are a firm's home office personnel subject to public appearance requirements?

**IV. CONCLUSION**

WFA appreciates the opportunity to comment on FINRA's Proposal and commends FINRA's continuing efforts in assessing the impact and usefulness of their rules. We look forward to further clarification of the communications with the public rules in future guidance. Please feel free to contact me with any questions or comments.

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy