

July 1, 2015

BY EMAIL To: (pubcom@finra.org)

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

RE: FINRA Regulatory Notice 15-16, Request for Comments on Proposed Amendments to Rules Governing Communications With the Public

Dear Ms. Asquith:

TD Ameritrade, Inc.¹ (“TD Ameritrade” or “the Firm”) appreciates the opportunity to comment on proposed amendments to filing requirements in FINRA Rule 2210 and FINRA Rule 2214 and the content and disclosure requirements in FINRA Rule 2213. TD Ameritrade fully supports FINRA’s efforts to better align the investor protection benefits and the economic impacts of its rules, and includes further recommendations and comments below to further FINRA’s efforts in this area.

Backup Material for Investment Company Performance Rankings and Comparison

FINRA proposes to eliminate the requirement to file ranking and comparison backup material and instead require firms to maintain backup materials as part of their records. The Firm supports FINRA’s proposal as it will reduce the costs of compliance in this area without impacting investors. In the discussion of the proposal the Firm agrees with FINRA’s observation that some requirements which may have made sense prior to the Internet, can evolve over time in light of technological advances and ready access to multiple sources of information.

Generic Investment Company Communications

TD Ameritrade wholeheartedly supports the proposal related to generic investment company communications, whereby FINRA proposes to exclude from the filing requirements generic investment company retail communications that do not promote a particular fund or fund family. A significant portion of the Firm’s retail communications concerning registered investment companies fall under this description. TD Ameritrade agrees with FINRA’s assessment that this type of material typically is intended to educate the public about investment companies in general or the types of products that a member firm offers, and thus does not present the same risks of including potentially misleading information as promotional communications about specific funds or fund families.

¹ TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation (“TD Ameritrade Holding”). TD Ameritrade Holding has a 40-year history of providing financial services to self-directed investors. TD Ameritrade, provides investing and trading services to over six million client accounts that total more than \$710 billion in assets, and custodial services for more than 4000 independent registered investment advisors. During May 2015, TD Ameritrade’s clients on average placed approximately 427,000 trades each day.

Investment Analysis Tools

TD Ameritrade also supports the proposed amendment with respect to investment analysis tools, whereby FINRA proposes to eliminate the filing requirement for investment analysis tool report templates and retail communications concerning such tools. In this case, however, TD Ameritrade recommends that FINRA consider an additional change to Rule 2214 to eliminate the disclosure requirements prescribed by paragraph (c) of the Rule for retail communications concerning the tool. At recent conferences, FINRA staff has discussed member concerns about “excessive disclosure content,” and questioned whether all such content was “required,” or added by members themselves voluntarily. Extensive disclosures are “required” by Rule 2214 and the Firm questions their value in something like a print ad, or a TV commercial.

While TD Ameritrade acknowledges that disclosures required by Rule 2214(c) are appropriate for a report template, TD Ameritrade does not believe they have any value, or provide any investor protection, when included on retail communications (*i.e.*, marketing materials) concerning the tool. The Firm is aware of the limited exceptions for retail communications addressed in Supplementary Material .06 of the Rule, however, that guidance is subject to interpretation of terms such as “incidental reference” and “refers to . . . more detail...” The Firm believes a clear line requiring the disclosures for report templates but eliminating them for retail communications would be beneficial without impacting investor protection.²

Lastly, TD Ameritrade believes that over time Rule 2214 has been applied more broadly than originally intended, to include some retirement planning calculators, which while they do “produce simulations and statistical analysis of the likelihood of various outcomes,” do not pose risk to investors. These calculators frequently use only broad asset class allocation data as the “investments, investment strategies or styles” addressed by Rule 2214. The Firm recommends continued evaluation of Rule 2214, and the possible exemption from the definition of investment analysis tool for planning calculators where the investment strategy or style is limited to broad asset class allocation.

Filing Exclusion for Templates

TD Ameritrade supports the proposal related to expanding the template filing exclusion to include updated non-predictive narrative descriptions of market events during the period covered by the communication and factual descriptions of portfolio changes, as a sensible update that will save member firms’ from unnecessary filing costs.

Alternative Approaches

FINRA requests specific comment on whether there are alternative approaches FINRA should consider to accomplish the goals described in this proposal, including opportunities to better align investor protection with the associated risks of activities and the costs of compliance. To that end, TD Ameritrade strongly recommends a review of FINRA Rule 2220 Options Communications, one of the rules governing communication with the public that was specifically excluded from the retrospective rule review conducted last year. TD Ameritrade has a large, and rapidly growing options business that generates a need to actively communicate with the public about the product and our trading platforms. In fact, options trading currently accounts for approximately 31% of the Firm’s trades per day. In

² TD Ameritrade submits that if FINRA made it clear that retail communications did not require the disclosures, there would be no investor harm because such investors would receive the disclosures at the time they accessed the tools on the Internet.

Regulatory Notice 15-16, FINRA identifies the benefit of providing educational materials to permit investors to better understand the relative risks, costs, strategies and historical performance of mutual funds. TD Ameritrade submits that the same benefits exist concerning educational material related to options.

Additional Changes to Consider

TD Ameritrade also agrees with FINRA's comments in Endnote 4 concerning the potential for additional changes to Rule 2210 in response to comments addressing other issues, such as the amount of disclosure required in communications with the public, the standards applicable to the presentation of performance, and the standards governing online, mobile and social media communications. Just as the Internet as a communication channel was different than those that preceded it, the Firm views the mobile and social media channels, as quite different from the Internet. The Firm believes the mobile and social media channels are ripe for continued evolution of standards as well as means and method of compliance.

TD Ameritrade appreciates the opportunity to comment on this proposal. Please contact me at 503-610-1279 if you have any questions regarding the Firm's comments.

Sincerely,

W.J. Sampson
Compliance Communications Review
TD Ameritrade, Inc.