

July 1, 2015

Via email to pubcom@finra.org

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

Dear Ms. Asquith,

The Investment Program Association (“IPA”)¹ respectfully submits this letter in response to the request for comments by the Financial Industry Regulatory Authority (“FINRA”) on RN 15-16, Proposed Amendments to Rules Governing Communications with the Public.

Background

In April 2014, FINRA launched a retrospective review of its Communications with the Public Rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on the assessment phase of the review. The report concluded that, while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits with the economic impacts.

Pursuant to the recommendations in the report and as explained in RN 15-16, FINRA initially is proposing amendments to the filing requirements in FINRA Rule 2210 and FINRA Rule 2214 and the content and disclosure requirements in FINRA Rule 2213.

IPA Position

The IPA applauds FINRA in its continued efforts to keep current with the ever-changing environment in which its rules exist.

The IPA expresses its support of the proposed, “Filing Exclusion for Templates,” that would expand the template filing exclusion to allow firms to update non-predictive narrative descriptions of market events which have occurred in the period covered by the communication and to further update the factual descriptions of portfolio changes without having to refile the template.

The IPA also supports the proposal to exclude from the filing requirements generic retail communications related to investment companies. It is standard practice to create non-product specific materials for the purpose of educating the investing public about product types, such as

¹ Formed in 1985, the IPA provides the direct investment industry with effective national leadership, and today is the leading advocate for the inclusion of direct investments in a diversified investment portfolio. IPA members include direct investment product sponsors, FINRA member broker/dealer firms, and direct investment service providers.

comparisons of growth versus income investment companies, comparisons between traded versus non-traded products, Business Development Companies (BDCs) versus REITs, or closed-end funds versus open end and exchange traded funds. Therefore, we encourage FINRA to also extend the generic material filing exclusion to cover not just investment companies, but all investment products, including direct investments, as defined below. Progressing in this manner would facilitate the education of investors and would allow for a more accurate portrayal of the array of investments and unique characteristics of those investments that individuals should consider when evaluating financial products.

Lastly, we ask that FINRA provide clarity to its guidance with regard to the applicability of the exclusion to single product distributors. There is currently some ambiguity in the industry as to whether or not a dealer manager of a single offering could publish generic materials without some level of inference that the materials' intent is to condition the market for sales of that product.

Analysis

Direct investment categories include: non-traded REITs, non-traded BDCs, oil and gas programs and equipment leasing programs. In 2014, more than 30,000 financial advisors used non-listed REITs or BDCs in their practices, and more than 1.2 million investors had non-listed REITs or BDCs in their investment portfolios.

FINRA has asserted that retail investors do not understand many of the alternative investment options available to them. Participating broker/dealers regularly make requests of dealer managers to produce educational materials that facilitate discussions between financial advisors and investors regarding product features and risks. However, in creating those materials the dealer manager may find out the intended "generic materials" are classified as sales material and, therefore, must follow sales material requirements. In addition, it is sometimes stated by regulators that material cannot be generic if there is only one offering of that type available through the dealer manager. This can be challenging for dealer managers as they may have limited offerings of any one specific investment type. Regardless of who creates the material, the financial advisor is the end user of the piece with the investing public, and they use the piece for generic education of an asset class that is one of the numerous options available on that advisor's broker/dealer platform.

The IPA believes the guidelines of the Securities Act of 1933, under Rule 135a, provides a good structure for defining material as retail sales communications or generic communications. We believe generic educational materials should not be deemed an offer of any security if the material contains a general discussion of product attributes and does not include the name of a specific product or any information relating solely to a specific product offering.

Direct Investments are complex products that offer investors the potential for significant benefits, and they carry with them significant risks. The IPA believes that investors need non-product specific educational materials that clearly explain the benefits and risks to understand the investment being presented by their financial advisor.

We believe that expanding the proposed filing exclusion from its focus on generic investment company retail communications to all generic investor education retail communications would:

- Reflect that investors have more choices than just investment companies to meet their financial goals;
- Support the need for more education regarding complex products, including direct investments;
- Allow dealer managers to more quickly produce and deliver educational materials for use with the investing public; and,
- Contribute to the reduction of the number of pieces submitted to FINRA that do not carry the same risks as promotional communications about a specific investment.

Conclusion

We submit our observations, comments and recommendations in support of FINRA's continued efforts to modernize the Communication with the Public Rules. Thank you for this opportunity.

Respectfully submitted,



Kevin Shields
Chairman of the Board of Directors