Communications with the Public

Rules Reference Guide

2017 Advertising Regulation Conference

FINRA Rules

Rule 2210	Communications with the Public (effective 1/9/2017)	1
Rule 2211	Communications with the Public About Variable Life Insurance and Variable Annuities	12
Rule 2212	Use of Investment Companies Rankings in Retail Communications	14
Rule 2213	Requirements for the Use of Bond Mutual Fund Volatility Ratings	16
Rule 2214	Requirements for the Use of Investment Analysis Tools	17
Rule 2215	Communications with the Public Regarding Security Futures	19
Rule 2216	Communications with the Public About Collateralized Mortgage Obligations (CMOs)	22
Rule 2220	Options Communications	25
Rule 2241	Research Analysts and Research Reports	30
Rule 2242	Debt Research Analysts and Debt Research Reports	40
Rule 2264	Margin Disclosure Statement	53
Rule 2270	Day-Trading Risk Disclosure Statement	55
Rule 3110	Supervision	57
Rule 3160	Networking Arrangements between Members and Financial Institutions	67
Rule 3230	Telemarketing	69
Rule 8210	Provision of Information and Testimony and Inspection and Copying of Books	76

Capital Acquisition Brokers (CAB) Rule 79

Funding Portal Conduct Rule 80

Securities Act of 1933

230.134	Communications Not Deemed a Prospectus	81
230.135a	Generic Advertising	84
230.156	Investment Company Sales Literature	85
230.433	Conditions to Permissible Post-Filing Free Writing Prospectuses	86
230.482	Advertising by an Investment Company as Satisfying Requirements of Section 10	92

Investment Company Act of 1940

270.34b-1	Sales Literature Deemed to be Misleading	97

Municipal Securities Rulemaking Board

MSRB G-21 Advertising –Effective until November 17, 2017 99

MSRB G-21 Advertising – Effective November 18, 2017 106

Interpretive Guidance

Interpretation on General Advertising Disclosures, Blind Advertisements, and Annual Reports Relating to Municipal Fund Securities Under Rule G-21
June 5, 2007 115

529 College Savings Plan Advertisements
May 12, 2006 117

Disclosure obligations
May 21, 1998 119

Advertisements on Behalf of Issuer
June 20, 1994 112

Advertisements Showing Current Yield
April 22, 1998 121

Advertising of Securities Subject to Alternative Minimum Tax
February 23, 1988 122

Advertisements of Securities Not Owned
July 1, 1982 123

Contents of Advertisement: Put Options
July 13, 1981 124

Legend Satisfying Requirement
August 28, 1979 125

Securities Investor Protection Corporation

SIPC Advertising Bylaw - Amended August 2016
Article 10. Member Advertising 126

Appendix A

Regulatory Notices
Subject Index 129

Appendix B

Regulatory Notices
Chronological Order 131

Appendix C

Retired FINRA Rules
(These rules have been updated with new versions)
FINRA Rule 2210 (Effective from July 16, 2016 – January 8, 2017) 136
FINRA Rule 2213 (Effective from February 4, 2013- January 8, 2017) 147
FINRA Rule 2214 (Effective from July 11, 2014- January 8, 2017) 149
FINRA Rule 3110 (Effective from July 31, 2015 – April 2, 2017) 151

FINRA RULES

2210. COMMUNICATIONS WITH THE PUBLIC

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Communications" consist of correspondence, retail communications and institutional communications.

(2) "Correspondence" means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) "Institutional communication" means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.

(4) "Institutional investor" means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) "Retail communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) "Retail investor" means any person other than an institutional investor, regardless of whether the person has an account with a member.

(b) Approval, Review and Recordkeeping

(1) **Retail Communications**

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to NYSE Rule 344 with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rules 3110(b) and 3110.06 through .09:

(i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 2241(a)(11)(A) or "debt research report" under Rule 2242(a)(3)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) **Correspondence**

All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) **Institutional Communications**

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) **Recordkeeping**

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication;

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department; and

(vi) for any retail communication that includes or incorporates a performance ranking or performance comparison of a registered investment company, a copy of the ranking or performance used in the retail communication.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of Rules 3110.09 and 4511.

(c) Filing Requirements and Review Procedures

(1) **Requirement for Certain Members to File Retail Communications Prior to First Use**

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) **Requirement to File Certain Retail Communications Prior to First Use**

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(3) **Requirement to File Certain Retail Communications**

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2).

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(D) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (C) of paragraph (c)(3).

(4) **Filing of Television or Video Retail Communications**

If a member has filed a draft version or "story board" of a television or video retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) **Date of First Use and Approval Information**

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

(6) **Spot-Check Procedures**

In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(7) **Exclusions from Filing Requirements**

The following communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4):

(A) Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to:

(i) updates of more recent statistical or other non-narrative information; and

(ii) non-predictive narrative information that describes market events during the period covered by the communication or factual changes in portfolio composition or is sourced from a registered investment company's regulatory documents filed with the SEC.

(C) Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D) Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E) Retail communications that do no more than identify the member or offer a specific security at a stated price.

(F) Prospectuses, preliminary prospectuses, fund profiles, offering circulars, annual or semi-annual reports and similar documents that have been filed with the SEC or any state in compliance with applicable requirements, similar offering documents concerning securities offerings that are exempt from SEC and state registration requirements, and free writing prospectuses that are exempt from filing with the SEC, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion.

(G) Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended, or any rule thereunder, such as Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

(H) Press releases that are made available only to members of the media.

(I) Any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

(J) Correspondence.

(K) Institutional communications.

(L) Communications that refer to types of investments solely as part of a listing of products or services offered by the member.

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

(O) Research reports as defined in Rule 2241 that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to Section 24(b) of the Investment Company Act.

(8) **Communications Deemed Filed with FINRA**

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(9) **Filing Exemptions**

(A) Pursuant to the Rule 9600 Series, FINRA may exempt a member from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(d) Content Standards

(1) **General Standards**

(A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information 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.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

(2) **Comparisons**

Any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(3) **Disclosure of Member's Name**

All retail communications and correspondence must:

(A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3) does not apply to so-called "blind" advertisements used to recruit personnel.

(4) **Tax Considerations**

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

(5) **Disclosure of Fees, Expenses and Standardized Performance**

(A) Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of distribution or submission for publication of a communication; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) **Testimonials**

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) **Recommendations**

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation,

whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

(D)(i) This paragraph (d)(7) does not apply to any communication that meets the definition of "research report" for purposes of Rule 2241 or that meets the definition of "debt research report" for purposes of Rule 2242, and includes all of the disclosures required by Rule 2241 or 2242, as applicable.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

(8) **BrokerCheck**

(A) Each of a member's websites must include a readily apparent reference and hyperlink to BrokerCheck on:

(i) the initial webpage that the member intends to be viewed by retail investors; and

(ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors.

(B) The requirements of subparagraph (A) shall not apply to:

(i) a member that does not provide products or services to retail investors; and

(ii) a directory or list of registered persons limited to names and contact information.

(9) **Prospectuses Filed with the SEC**

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC and free writing prospectuses that are exempt from filing with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d) shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) Limitations on Use of FINRA's Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication that complies with the applicable standards of this Rule and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security, and provided further that any reference to the Department's review of a communication is limited to either “Reviewed by FINRA” or “FINRA Reviewed”;

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the FINRA Uniform Practice Code"; and

(3) on a member's website, provided that the member provides a hyperlink to FINRA's internet home page, www.finra.org, in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its website. If the member's website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the public's attention to FINRA membership. This provision also shall apply to an internet website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence (“public appearance”), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of Rule 2241 or by a debt research analyst for purposes of Rule 2242 that includes all of the disclosures required by Rule 2241 or 2242, as applicable. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

(g) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications will be deemed a violation of this Rule 2210.

Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2016-021 eff. July 16, 2016.
Amended by SR-FINRA-2015-022 eff. June 6, 2016.
Amended by SR-FINRA-2015-050. eff. Dec. 24, 2015.
Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2008-044 eff. Feb. 5, 2009.
Amended by SR-FINRA-2007-020 eff. March 26, 2008.
Amended by SR-FINRA-2007-014 eff. Nov. 17, 2007.
Amended by SR-NASD-2006-073 eff. July 7, 2007.
Amended by SR-NASD-2007-042 eff. June 27, 2007 (Implementation date of IM-2210-4 (3) is Oct 31, 2007).
Amended by SR-NASD-2004-043 eff. April 1, 2007.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2004-123 eff. Aug. 10, 2004.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-2000-12 and SR-NASD-2003-94 eff. Nov. 3, 2003.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-98-32 eff. April 1, 2000.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Amended by SR-NASD-98-29 eff. Nov. 16, 1998.
Amended by SR-NASD-98-28 eff. July 15, 1998.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-33 eff. May 9, 1997.
Amended by SR-NASD-95-39 eff. Aug. 20, 1996.
Amended by SR-NASD-95-12 eff. Aug. 9, 1995.
Amended by SR-NASD-93-66 eff. Mar. 17, 1994.
Amended by SR-NASD-92-53 eff. July 1, 1993.
Amended eff. Aug. 2, 1983; June 5, 1987; July 1, 1988; Nov. 28, 1988; June 26, 1990; Mar. 27, 1991; Sept. 13, 1991; Nov. 16, 1992.
Selected Notices: 98-83, 99-16, 00-15, 00-22, 03-38, 04-36, 04-64, 06-48, 07-02, 07-47, 09-10, 12-29, 14-30, 15-50, 16-41.

2211. Communications with the Public About Variable Life Insurance and Variable Annuities

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing retail communications and correspondence, as defined in Rule 2210, about variable life insurance and variable annuities.

(a) General Considerations

(1) **Product Identification**

In order to assure that investors understand exactly what security is being discussed, retail communication and correspondence must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount. With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

(3) Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, retail communications and correspondence may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, retail communications and correspondence may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable FINRA and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in Rule 2210(d)(2).

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in retail communications provided its use is consistent with the standards contained in Rule 2212.

(4) Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Retail communications and correspondence on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Such communications for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance Retail Communications and Correspondence

(A)(i) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

(ii) An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

(iii) The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

(iv) Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(B) In retail communications and correspondence which include hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

(i) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in subparagraph (A), above;

(ii) the rate of return used in the comparative illustration must be no greater than 12%;

(iii) the rate of return assumed for the side product and the variable life policy must be the same;

(iv) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;

(v) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,

(vi) the side product must not be identified or characterized as any specific investment or investment type.

Amended by SR-FINRA-2016-036 eff. Sep. 30, 2016.
Amended by SR-NASD-2004-176 eff. Jan. 1, 2005.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Adopted by SR-NASD-94-02 eff. Mar. 21, 1994.
Selected Notice: 03-38.

2212. Use of Investment Companies Rankings in Retail Communications

(a) Definition of "Ranking Entity"

For purposes of this Rule, the term "Ranking Entity" refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members may not use investment company rankings in any retail communication other than (1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also must conform to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category.

(2) Required Prominent Disclosure

All retail communications containing an investment company ranking must disclose prominently:

(A) the name of the category (e.g., growth);

(B) the number of investment companies or, if applicable, investment company families, in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;

(D) the length of the period (or the first day of the period) and its ending date; and

(E) criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

(3) Other Required Disclosure

All retail communications containing an investment company ranking also must disclose:

(A) the fact that past performance is no guarantee of future results;

(B) for investment companies that assess front-end sales loads, whether the ranking takes those loads into account;

(C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 2011"); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

(d) Time Periods

(1) Current Rankings

Any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) Rankings Time Periods; Use of Yield Rankings

Except for money market mutual funds:

(A) retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a published category or subcategory created by a Ranking Entity or (B) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

(g) Investment Company Families

Retail communications may contain rankings of investment company families, provided that these rankings comply with this Rule, and further provided that no retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this Rule, the term "investment company family" means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

(h) Independently Prepared Reprints

This Rule shall not apply to any reprint or excerpt of any article or report that is excluded from the FINRA Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Amended by SR-NASD-96-39 eff. Mar. 5, 1997.
Adopted by SR-NASD-93-69 eff. July 12, 1994.
Selected Notices: 86-41, 92-59, 93-18, 93-73, 93-76, 93-85, 93-87, 94-16, 94-25, 94-36, 94-60, 95-49, 95-74, 95-80, 12-29.

2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may distribute a retail communication that includes a bond mutual fund volatility rating only when the following requirements are satisfied:

(1) The rating does not identify or describe volatility as a "risk" rating.

(2) The retail communication incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the disclosure that accompanies the rating must be clear, concise, and understandable.

(4) The retail communication conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a website, or both.

(c) Disclosure Requirements

(1) The following disclosures shall be provided with respect to each bond mutual fund volatility rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating;

(C) a link to, or website address for, a website that includes the criteria and methodologies used to determine the rating;

(D) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) whether consideration was paid in connection with obtaining the issuance of the rating;

(iii) a description of the types of risks the rating measures (e.g., short-term volatility); and

(iv) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2005-117 eff. Dec. 27, 2005.
Amended by SR-NASD-2005-104 eff. Aug. 31, 2005.
Amended by SR-NASD-2003-126 eff. Aug. 31, 2003.
Amended by SR-NASD-2001-49 eff. August 10, 2001.
Adopted by SR-NASD-97-89 eff. Feb. 29, 2000.
Selected Notices: 96-84, 00-17, 00-23, 12-29, 16-41.

2214. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This Rule provides a limited exception to Rule 2210(d)(1)(F). No member may imply that FINRA endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) must provide FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool upon request.

(b) Definition

For purposes of this Rule and any interpretation thereof, an "investment analysis tool" is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and Retail Communications

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related retail communications only if the tool, written report or related retail communication:

(1) describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) explains that results may vary with each use and over time;

(3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written (which may be electronic) narrative form.

• • • Supplementary Material: ----------

.1 Relationship to Rule 2210(d)(1)(F)

Rule 2210(d)(1)(F) states that "[c]ommunications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." This Rule allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

.2 Advertising Regulation Department Requests

A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The

Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

.3 Material Changes to Disclosures

After the Department has reviewed the investment analysis tool, written-report template, or retail communication, a member must notify the Department and provide additional access to the tool and re-file any template, or retail communication if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

.4 Investment Analysis Tools Used with Institutional Investors

A member that offers an investment analysis tool exclusively to "institutional investors," as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for "institutional communication," as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool or any related report with, any "retail investor," as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

.5 Compliance with Other Applicable Laws and Rules

As in all cases, a member's compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with FINRA's suitability rule (Rule 2111), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud provisions), the SEC rules (including, but not limited to, Securities Act Rule 156 and other FINRA rules.

.6 Incidental References to Investment Analysis Tools

A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210. A retail communication that refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool must provide the disclosures required by paragraphs (c)(2) and (c)(4), but may exclude the disclosures required by paragraphs (c)(1) and (c)(3).

.7 Investment Analysis Tools that Favor Certain Securities

The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Adopted by SR-NASD-2003-13 eff. Feb. 15, 2005.
Selected Notices: 04-86, 12-29, 14-30, 16-41.

2215. Communications with the Public Regarding Security Futures

(a) FINRA Filing Requirements

(1) As set forth in paragraph (c)(2) of Rule 2210, a member must submit all retail communications concerning security futures to FINRA's Advertising Regulation Department at least 10 business days prior to first use.

(2) The requirements of this paragraph (a) shall not be applicable to:

(A) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications, and

(B) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(b) Standards Applicable to Security Futures Communications

(1) Communications Used Prior to Delivery of the Security Futures Risk Disclosure Statements

(A) All communications concerning security futures shall be accompanied or preceded by the security futures risk disclosure statement unless they meet the following requirements:

(i) Such communications must be limited to general descriptions of the security futures being offered.

(ii) Such communications must contain contact information for obtaining a copy of the security futures risk disclosure statement.

(iii) Such communications must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities.

(B) Communications concerning security futures that meet the requirements of paragraphs (b)(1)(A)(i) through (iii) may have the following characteristics:

(i) the text of the communication may contain a brief description of security futures, including a statement that identifies registered clearing agencies for security futures. The text may also contain a brief description of the general attributes and method of operation of the securities exchange or notice-registered securities exchange on which such security futures are traded, including a discussion of how a security future is priced;

(ii) the communication may include any statement required by any state law or administrative authority; and

(iii) advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(2) General Standards

(A) No member or associated person of a member shall distribute or make available any communication concerning a security future that:

(i) contains any statement suggesting the certain availability of a secondary market for security futures;

(ii) fails to reflect the special risks attendant to security futures transactions and the complexities of certain security futures investment strategies;

(iii) fails to include a warning to the effect that security futures are not suitable for all investors or contains suggestions to the contrary; or

(iv) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of security futures programs or the security futures expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(B) Paragraphs (b)(2)(A)(iii) and (b)(2)(A)(iv) do not apply to institutional communications as defined in Rule 2210(a)(3).

(C) Any statement referring to the potential opportunities or advantages presented by security futures must be balanced by a statement of the corresponding risks. The risk statement must reflect the same degree of specificity as the statement of opportunities, and must avoid broad generalities.

(3) Projections

Notwithstanding the provisions of Rule 2210(d)(1)(F), security futures communications may contain projected performance figures (including projected annualized rates of return), provided that:

(A) all such communications must be accompanied or preceded by the security futures risk disclosure statement;

(B) no suggestion of certainty of future performance is made;

(C) parameters relating to such performance figures are clearly established;

(D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F) all material assumptions made in such calculations are clearly identified;

(G) the risks involved in the proposed transactions are disclosed; and

(H) in communications relating to annualized rates of return, that such returns are not based upon any less than a 60-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(4) Historical Performance

Security futures communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications must be accompanied or preceded by the security futures risk disclosure statement;

(B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D) all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return, all material assumptions used in the process of annualization are disclosed;

(F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H) a principal qualified to supervise security futures activities determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(c) Security Futures Programs

In communications regarding a security futures program (i.e., an investment plan employing the systematic use of one or more security futures strategies), the cumulative history or unproven nature of the program and its underlying assumptions must be disclosed.

(d) Standard Forms of Worksheets

Such worksheets must be uniform within a member. If a member has adopted a standard form of worksheet for a particular security futures strategy, nonstandard worksheets for that strategy may not be used.

(e) Recordkeeping

Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.

Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.

Adopted by SR-NASD-2002-40 eff. Oct. 15, 2002.

Selected Notice: 12-29.

2216. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) Definition

For purposes of this Rule, the term "collateralized mortgage obligation" (CMO) refers to a multi-class debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.

(b) Disclosure Standards and Required Educational Material

(1) Disclosure Standards

All retail communications and correspondence concerning CMOs:

(A) must include within the name of the product the term "Collateralized Mortgage Obligation";

(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;

(C) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and

(D) must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

(2) Required Educational Material

Before the sale of a CMO to any person other than an institutional investor, as defined in Rule 2210(a)(4), a member must offer to the person educational material that includes the following:

(A) a discussion of:

(i) characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;

(ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and

(iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

(c) Promotion of Specific CMOs

In addition to the standards set forth above, retail communications and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this Rule.

(1) The retail communication or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Section 1 Title — Collateralized Mortgage Obligations

Coupon Rate

Anticipated Yield/Average Life

Specific Tranche — Number & Class

Final Maturity Date

Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3 Product Features (Optional):

Minimum Denominations

Rating Disclosure

Agency/Government Backing

Income Payment Structure

Generic Description of Tranche (e.g., PAC, Companion)

Yield to Maturity of CMOs Offered at Par

Section 4 Company Information:

Name, Memberships

Address

Telephone Number

Representative's Name

(2) Additional Conditions

The following conditions must also be met:

(A) All figures in Section 1 must be in equal type size.

(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.

(C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member must be able to justify the assumption used. A copy of either the service's listing for the CMO or the member's justification must be attached to the copy of the communication that is maintained in the member's advertising files in order to verify that the prepayment scenario is reasonable.

(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.

(E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

(3) Radio/Television Advertisements

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

> "The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:

> "The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

(4) Standardized CMO Communication Example

Collateralized Mortgage Obligations

7.50% Coupon

7.75% Anticipated Yield to 22-Year Average Life

FNMA 9532X, Final Maturity March 2023

Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

$5,000 Minimum

Income Paid Monthly

Implied Rating/Volatility Rating

Principal and Interest Payments Backed by FNMA

PAC Bond

Offered subject to prior sale and price change.

Call Mary Representative at (800)555-1234

Your Company Securities, Inc., Member SIPC

123 Main Street

Anytown, State 12121

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Adopted by SR-NASD-2000-12 eff. Nov. 3, 2003.
Selected Notice: 12-29.

2220. OPTIONS COMMUNICATIONS

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Options communications" consist of:

(A) "Correspondence." Any "Correspondence" as defined in Rule 2210(a)(2) concerning options.

(B) "Institutional Communication." Any "Institutional Communication" as defined in Rule 2210(a)(3) concerning options.

(C) "Retail Communication." Any "Retail Communication" as defined in Rule 2210(a)(5) concerning options including worksheet templates.

(2) "Standardized option" means any option contract issued, or subject to issuance, by The Options Clearing Corporation, that has standardized terms for the strike price, expiration date, and amount of the underlying security, and is traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act.

(3) "Option" as defined in Rule 2360(a).

(4) "Options disclosure document" has the same meaning as the term "disclosure document" as defined in Rule 2360(a).

(b) Approval by a Registered Options Principal and Recordkeeping

(1) Retail Communications. All retail communications (except completed worksheets) issued by a member concerning options shall be approved in advance by a Registered Options Principal designated by the member's written supervisory procedures.

(2) Correspondence. Correspondence need not be approved by a Registered Options Principal prior to use. All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) Institutional Communications. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a Registered Options Principal of institutional communications used by the member and its registered representatives as described in Rule 2210(b)(3).

(4) Copies of the options communications shall be retained by the member in accordance with SEA Rule 17a-4. The names of the persons who prepared the options communications, the names of the persons who approved the options communications, and the source of any recommendations contained therein, shall be retained by the member and be kept in the form and for the time period required for options communications by SEA Rule 17a-4.

(c) FINRA Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, all retail communications issued by a member concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted to the Advertising Regulation Department of FINRA (the "Department") at least ten calendar days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Department, shall be withheld from circulation until any changes specified by the Department have been made or, in the event of disapproval, until such options communication has been resubmitted for, and has received, Department approval.

(2)(A) Notwithstanding the foregoing provision, the Department, upon review of a member's options communications, and after determining that the member has departed from the standards of this Rule, may require that such member file some or all options communications or the portions of such

member's communications that are related to options with the Department, at least ten calendar days prior to use.

(B) The Department shall notify the member in writing of the types of options communications to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(3) In addition to the foregoing requirements, every member's options communications shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the communications requested. Members will not be required to submit communications under this procedure that have been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this paragraph (c) shall not be applicable to:

(A) options communications submitted to another self-regulatory organization having comparable standards pertaining to such communications;

(B) communications in which the only reference to options is contained in a listing of the services of the member;

(C) the options disclosure document; and

(D) the prospectus.

(d) Standards Applicable to Communications

(1) **Communications Regarding Standardized Options used Prior to Delivery of Options Disclosure Document**

(A) Options communications regarding standardized options exempted under Securities Act Rule 238 used prior to options disclosure document delivery:

(i) must be limited to general descriptions of the options being discussed. The text may also contain a brief description of options, including a statement that identifies registered clearing agencies for options and a brief description of the general attributes and method of operation of the exchanges on which such options are traded, including a discussion of how an option is priced;

(ii) must contain contact information for obtaining a copy of the options disclosure document;

(iii) must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities;

(iv) may include any statement required by any state law or administrative authority; and

(v) may include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading.

(B) Options communications regarding options not exempted under Securities Act Rule 238 used prior to delivery of a prospectus that meets the requirements of Section 10(a) of the Securities Act must conform to Securities Act Rule 134 or 134a, as applicable.

(2) **General Standards**

(A) No member or associated person of the member shall use any options communications which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
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(iii) contains cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the material;

(iv) would constitute a prospectus as that term is defined in the Securities Act, unless it meets the requirements of Section 10 of the Securities Act;

(v) contains statements suggesting the certain availability of a secondary market for options;

(vi) fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies;

(vii) fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary; or

(viii) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics, or other technical data, will be supplied upon request.

(B) Subparagraphs (vii) and (viii) above shall not apply to institutional communications as defined in paragraph (a) of this Rule.

(C) Any statement in any options communications referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities must be avoided.

(3) **Projections**

Options communications may contain projected performance figures (including projected annualized rates of return) provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) no suggestion of certainty of future performance is made;

(C) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires," "assume option unexercised," "assume option exercised," etc.);

(G) the risks involved in the proposed transactions are also disclosed; and

(H) in communications relating to annualized rates of return, that such returns are not based upon any less than a 60-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(4) **Historical Performance**

Options communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D) all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return, all material assumptions used in the process of annualization are disclosed;

(F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(5) **Options Programs**

In communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(6) **Violation of Other Rules**

Any violation by a member or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to member communications concerning options will be deemed a violation of this Rule 2220.

Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2009-036 eff. Dec. 14, 2009.

Amended by SR-FINRA-2008-013 eff. March 4, 2009.
Amended by SR-FINRA-2007-035 eff. June 23, 2008.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Adopted eff. Sept. 13, 1991.
Selected Notices: 85-69, 86-68, 87-24, 87-43, 88-20, 88-52, 88-65, 89-11, 91-26, 91-62, 92-56, 99-16, 04-36, 08-28, 08-73, 09-60.

2241. Research Analysts and Research Reports

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) "Emerging Growth Company" has the same meaning as in Section 3(a)(80) of the Exchange Act.

(2) "Equity security" has the same meaning as defined in Section 3(a)(11) of the Exchange Act.

(3) "Independent third-party research report" means a third-party research report, in respect of which the person producing the report:

(A) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and

(B) makes content determinations without any input from the distributing member or that member's affiliates.

(4) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(5) "Investment banking services" include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(6) "Member of a research analyst's household" means any individual whose principal residence is the same as the research analyst's principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another.

(7) "Public appearance" means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning an equity security. This term does not include a password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the event any disclosures in the research report that are inaccurate, misleading or no longer applicable.

(8) "Research analyst" means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst."

(9) "Research analyst account" means any account in which a research analyst or member of the research analyst's household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the research analyst or a member of the research analyst's household has discretion or control, provided that the research analyst or member of the research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a "blind trust" account that is controlled by a person other than the research analyst or member of the research analyst's household where neither the research analyst nor a member of the research analyst's household knows of the account's investments or investment transactions.

(10) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(11) "Research report" means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) communications that are limited to the following:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(iv) statistical summaries of multiple companies' financial data, including listings of current ratings;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors;

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent research report on the subject company that includes all current applicable disclosures required by this Rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable; or

(B) the following communications, even if they include an analysis of an individual equity security and information reasonably sufficient upon which to base an investment decision:

(i) any communication distributed to fewer than 15 persons;

(ii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(iii) internal communications that are not given to current or prospective customers;

(C) communications that constitute statutory prospectuses that are filed as part of a registration statement; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(12) "Sales and trading personnel" includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

(13) "Subject company" means the company whose equity securities are the subject of a research report or public appearance.

(14) "Third-party research report" means a research report that is produced by a person other than the member.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) the preparation, content and distribution of research reports;

(B) public appearances by research analysts; and

(C) the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers.

(2) A member's written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must:

(A) prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel;

(B) restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(C) prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination;

(D) limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities;

(E) prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities;

(F) require that the compensation of a research analyst who is primarily responsible for preparation of the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from the member's investment banking department and must consider the following factors when reviewing a research analyst's compensation, if applicable:

(i) the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;

(ii) the correlation between the research analyst's recommendations and the performance of the recommended securities; and

(iii) the overall ratings received from clients, sales force and peers independent of the member's investment banking department, and other independent ratings services.

The committee must document the basis upon which each such research analyst's compensation was established;

(G) establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in

investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision;

(H) prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests;

(I) define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer:

(i) of a minimum of 10 days following the date of an initial public offering if the member has participated as an underwriter or dealer in the initial public offering; or

(ii) of a minimum of three days following the date of a secondary offering if the member has acted as a manager or co-manager of that offering.

This subparagraph (I) shall not apply to the publication or distribution of a research report or a public appearance following an initial public offering or secondary offering of the securities of an Emerging Growth Company;

(iii) Subparagraphs (I)(i) and (ii) shall not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 10- and three-day periods, and provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made. Subparagraph (ii) will not prevent a member from publishing or otherwise distributing a research report pursuant to Securities Act Rule 139 regarding a subject company with "actively-traded securities," as defined in Rule 101(c)(1) of SEC Regulation M, and will not prevent a research analyst from making a public appearance concerning such a company.

(J) restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst, including:

(i) ensuring that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report;

(ii) providing that no research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member, and defining financial hardship circumstances, if any (e.g., unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account), in which the member will permit a research analyst account to trade in a manner inconsistent with such research analyst's most recently published recommendation; and

(iii) prohibiting a research analyst account from purchasing or receiving any security before an issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;

(K) prohibit explicit or implicit promises of favorable research, a particular research rating or recommendation or specific research content as inducement for the receipt of business or compensation;

(L) restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, including prohibiting:

(i) participation in pitches and other solicitations of investment banking services transactions; and

(ii) participation in road shows and other marketing on behalf of an issuer related to an investment banking services transaction;

(M) prohibit investment banking department personnel from directly or indirectly:

(i) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(ii) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction; and

(N) prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.

(c) Content and Disclosure in Research Reports

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that:

(A) purported facts in its research reports are based on reliable information; and

(B) any recommendation, rating or price target has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.

(2) A member that employs a rating system must clearly define in each research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. The definition of each rating must be consistent with its plain meaning.

(A) Irrespective of the rating system a member employs, a member must include in each research report that includes a rating the percentage of all securities rated by the member to which the member would assign a "buy," "hold" or "sell" rating.

(B) A member must disclose in each research report the percentage of subject companies within each of the "buy," "hold" and "sell" categories for which the member has provided investment banking services within the previous 12 months.

(C) The information required in paragraphs (c)(2)(A) and (B) must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter.

(3) If a research report contains either a rating or price target for a subject company's security, and the member has assigned a rating or price target to such security for at least one year, the research report must include a line graph of the security's daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter. The graph must:

(A) indicate the dates on which the member assigned or changed each rating or price target;
(B) depict each rating or price target assigned or changed on those dates; and

(C) be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter).

(4) A member must disclose in any research report at the time of publication or distribution of the report:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;

(C) if the member or any of its affiliates:

(i) managed or co-managed a public offering of securities for the subject company in the past 12 months;

(ii) received compensation for investment banking services from the subject company in the past 12 months; or

(iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;

(D) if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;

(E) if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;

(F) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(G) if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;

(H) if the research analyst received any compensation from the subject company in the previous 12 months; and

(I) any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.

(5) A member or research analyst will not be required to make a disclosure required by paragraph (c)(4) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(6) The disclosures required by this paragraph (c) must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by this Rule must be clear, comprehensive and prominent.

(7) A member that distributes a research report covering six or more subject companies (a "compendium report") may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports may include a hyperlink directly to the required disclosures. Paper-based compendium reports must provide either a toll free number to call or a postal address to request the required disclosures and may also include a web address where the disclosures can be found.

(d) Disclosure in Public Appearances

(1) A research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(C) if, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

(D) if the research analyst received any compensation from the subject company in the previous 12 months;

(E) if, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst; or

(F) any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance.

(2) A member or research analyst will not be required to make a disclosure required by this paragraph (d) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

(3) Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements in this paragraph (d). Such records must be maintained for at least three years from the date of the public appearance.

(e) Disclosure Required by Other Provisions

In addition to the disclosures required by paragraphs (c) and (d), members and research analysts must comply with all applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.

(f) Termination of Coverage

A member must promptly notify its customers if it intends to terminate coverage of a subject company. Such notice must be made using the member's ordinary means to disseminate research reports on the subject company to its various customers. The notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a member must disclose to its customers its reason for terminating coverage.

(g) Distribution of Member Research Reports

A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the research report.

(h) Distribution of Third-Party Research Reports

(1) Subject to paragraph (h)(5), a registered principal or supervisory analyst approved pursuant to Incorporated NYSE Rule 344 must review for compliance with the applicable provisions of paragraph (h) and approve by signature or initial all third-party research reports distributed by a member.

(2) A member may not distribute third-party research if it knows or has reason to know such research is not objective or reliable.

(3) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purposes of this paragraph (h)(3) only, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that:

(A) should be known from reading the report; or

(B) is known based on information otherwise possessed by the member.

(4) A member must accompany any third-party research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party research provider or the subject company of a third-party research report, including the disclosures required by paragraphs (c)(4)(C), (c)(4)(F), (c)(4)(G) and (c)(4)(I) of this Rule.

(5) A member shall not be required to review a third-party research report to determine compliance with paragraph (h)(3) if such research report is an independent third-party research report.

(6) A member shall not be considered to have distributed a third-party research report for the purposes of paragraph (h)(4) where the research is an independent third-party research report and is made available by a member (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

(7) A member must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.

(i) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A), (B), (C), (D), (F) and (G) shall not apply to members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions; provided, however, that with respect to paragraph (b)(2)(G), such members must establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision. For the purposes of this paragraph (i), the term "investment banking services transactions" include the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A), (B), (C), (D), (F) and (G).

(j) Exemption for Good Cause

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, conditionally or unconditionally grant an exemption from any requirement of this Rule for good cause shown after taking into account all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

• • • Supplementary Material: ----------

.1 Efforts to Solicit Investment Banking Business

(a) FINRA interprets paragraph (b)(2)(L)(i) to prohibit in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. For example, FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. On the other hand, a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage.

Members must consider whether the facts and circumstances of any solicitation or engagement would warrant disclosure under Section 17(b) of the Securities Act.

(b) Paragraph (b)(2)(L)(i) shall not prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that also is attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to solicit investment banking business.

.2 Joint Due Diligence

FINRA interprets paragraph (b)(1)(C) to prohibit the performance of joint due diligence (i.e., confirming the adequacy of disclosure in offering or other disclosure documents for a transaction) by the research analyst in the presence of investment banking department personnel prior to the selection by the issuer of the underwriters for the investment banking services transaction.

.3 Restrictions on Communications with Customers and Internal Personnel

(a) Consistent with the requirements of paragraph (b)(2)(M) of this Rule, no research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(b) FINRA interprets paragraph (b)(1)(C) of this Rule to require that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

.4 Disclosure of Non-Investment Banking Services Compensation

A member may satisfy the disclosure requirement in paragraph (c)(4)(D) with respect to receipt of non-investment banking services compensation by an affiliate by implementing policies and procedures reasonably designed to prevent the research analyst and associated persons of the member with the ability to influence the content of research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. However, a member must disclose receipt of non-investment banking services compensation by its affiliates from the subject company in the past 12 months when the research analyst or an associated person with the ability to influence the content of a research report has actual knowledge that an affiliate received such compensation during that time period.

.5 Submission of Sections of a Draft Research Reports for Factual Review

Consistent with the requirements of paragraphs (b)(2)(A) and (b)(2)(N), sections of a draft research report may be provided to non-investment banking personnel or to the subject company for factual review so long as:

(a) the sections of the report submitted do not contain the research summary, the research rating or the price target;

(b) a complete draft of the report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel or the subject company; and

(c) if, after submitting sections of the report to non-investment banking personnel or the subject company, the research department intends to change the proposed rating or price target, it must first provide written justification to, and

receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such report for three years after publication.

.6 Beneficial Ownership of Equity Securities

With respect to paragraphs (c)(4)(F) and (d)(1)(B), beneficial ownership of any class of common equity securities shall be computed in accordance with the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Exchange Act.

.7 Distribution of Member Research Products

With respect to paragraph (g), a member may provide different research products and services to different classes of customers. For example, a member may offer one research product for those with a long-term investment horizon ("investor research") and a different research product for those customers with a short-term investment horizon ("trading research"). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a research product with substantially the same content as a different product as a means to allow certain customers to trade in advance of other customers. In addition, a member that provides different research products and services for different customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.

.8 Ability to Influence the Content of a Research Report

For the purposes of this Rule, an associated person with the ability to influence the content of a research report is an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.

.9 Obligations of Persons Associated with a Member

Consistent with Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to this Rule 2241. In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by this Rule or related Supplementary Material.

.10 Divesting Research Analyst Holdings

With respect to paragraph (b)(2)(J)(ii), FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe; provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.

Adopted by SR-FINRA-2014-047 eff. Sept. 25, 2015 and Dec. 24, 2015.
Selected Notice: 15-30

2242. Debt Research Analysts and Debt Research Reports

(a) **Definitions**

For purposes of this Rule, the following terms shall be defined as provided.

(1) "Debt research analyst" means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a debt research analyst in connection with, the preparation of the substance of a debt research report, whether or not any such person has the job title of "research analyst."

(2) "Debt research analyst account" means any account in which a debt research analyst or member of the debt research analyst's household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the debt research analyst or a member of the debt research analyst's household has discretion or control, provided that the debt research analyst or member of a debt research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a "blind trust" account that is controlled by a person other than the debt research analyst or member of the debt research analyst's household where neither the debt research analyst nor a member of the debt research analyst's household knows of the account's investments or investment transactions.

(3) "Debt research report" means any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in Rule 2241(a)(11). In general, this term shall not include:

(A) communications that are limited to the following, if they do not include an analysis of, or recommend or rate, individual debt securities or issuers:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) commentaries on or analyses of particular types of debt securities or characteristics of debt securities;

(iv) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors or types of debt securities; or

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent debt research report on the subject company that includes all current applicable disclosures required by this Rule and that such debt research report does not contain materially misleading disclosure, including disclosures that are outdated or no longer applicable;

(B) the following communications, even if they include an analysis of an individual debt security or issuer and information reasonably sufficient upon which to base an investment decision:

(i) statistical summaries of multiple companies' financial data, including listings of current ratings that do not include an analysis of individual companies' data;

(ii) an analysis prepared for a specific person or a limited group of fewer than 15 persons;

(iii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual debt securities in the

context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(iv) internal communications that are not given to current or prospective customers;

(C) communications that constitute statutory prospectuses that are filed as part of the registration statement; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(4) "Debt security" means any "security" as defined in Section 3(a)(10) of the Exchange Act, except for any "equity security" as defined in Section 3(a)(11) of the Exchange Act, any "municipal security" as defined in Section 3(a)(29) of the Exchange Act, any "security-based swap" as defined in Section 3(a)(68) of the Exchange Act, and any "U.S. Treasury Security" as defined in paragraph (p) of Rule 6710.

(5) "Debt trader" means a person, with respect to transactions in debt securities, who is engaged in proprietary trading or the execution of transactions on an agency basis.

(6) "Independent third-party debt research report" means a third-party debt research report, in respect of which the person producing the report:

(A) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and

(B) makes content determinations without any input from the distributing member or that member's affiliates.

(7) "Institutional investor" means any person that satisfies the requirements of paragraph (j)(1)(A) or (B) of this Rule.

(8) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(9) "Investment banking services" include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(10) "Member of a debt research analyst's household" means any individual whose principal residence is the same as the debt research analyst's principal residence. This term shall not include an unrelated person who shares the same residence as a debt research analyst, provided that the debt research analyst and unrelated person are financially independent of one another.

(11) "Public appearance" means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a debt research analyst makes a recommendation or offers an opinion concerning a debt security or an issuer of a debt security. This term shall not include a password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current debt research report or other documentation that contains the required applicable disclosures, and that the debt research analyst appearing at the event corrects and updates during the event any disclosures in the debt research report that are inaccurate, misleading or no longer applicable.

(12) "Qualified institutional buyer" has the same meaning as under Rule 144A of the Securities Act.

(13) "Retail investor" means any person other than an institutional investor.

(14) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a debt research report on behalf of a member.

(15) "Sales and trading personnel" includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

(16) "Subject company" means the issuer whose debt securities are the subject of a debt research report or a public appearance.

(17) "Third-party debt research report" means a debt research report that is produced by a person or entity other than the member.

(b) **Identifying and Managing Conflicts of Interest**

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) the preparation, content and distribution of debt research reports;

(B) public appearances by debt research analysts; and

(C) the interaction between debt research analysts and those outside of the research department, including investment banking department personnel, sales and trading personnel, principal trading personnel, subject companies and customers;

(2) A member's written policies and procedures must be reasonably designed to promote objective and reliable debt research that reflects the truly held opinions of debt research analysts and to prevent the use of debt research reports or debt research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must:

(A) prohibit prepublication review, clearance or approval of debt research reports by:

(i) investment banking personnel;

(ii) principal trading personnel; and

(iii) sales and trading personnel;

(B) restrict or prohibit prepublication review, clearance or approval of debt research reports by other persons not directly responsible for the preparation, content and distribution of debt research reports, other than legal and compliance personnel;

(C) restrict or limit input by investment banking department, sales and trading and principal trading personnel into debt research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(D) limit supervision of a debt research analyst to persons not engaged in:

(i) investment banking services transactions (such persons shall also be precluded from input into the compensation of debt research analysts);

(ii) principal trading activities (such persons shall also be precluded from input into the compensation of debt research analysts); or

(iii) sales and trading;

(E) limit determination of the debt research department budget to senior management, excluding senior management engaged in investment banking services or principal trading activities, and without regard to specific revenues or results derived from investment banking. Revenues and results of the firm as a whole, however, may be considered in determining the debt research department budget and allocation of debt research department expenses. Nothing in this provision shall require a member to prohibit any personnel from providing to senior management input regarding the demand for and quality of debt research, including product trends and customer interests;

(F) prohibit compensation based upon specific investment banking services or specific trading transactions or contributions to a member's investment banking services or principal trading activities;

(G) require that the compensation of a debt research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from investment banking personnel or persons engaged in principal trading activities and must consider the following factors when reviewing a debt research analyst's compensation, if applicable:

(i) the debt research analyst's individual performance, including the analyst's productivity and the quality of the debt research analyst's research; and

(ii) the overall ratings received from customers and peers (independent of the member's investment banking department and persons engaged in principal trading activities) and other independent ratings services.

Sales and trading personnel, but not personnel engaged in principal trading activities, may provide input to debt research management into the evaluation of the debt research analyst in order to convey customer feedback; provided, however, that final compensation determinations must be made by research management, subject to review and approval by the committee described in this subparagraph (G).

The committee must document the basis upon which each such research analyst's compensation was established, including any input from sales and trading;

(H) establish information barriers or other institutional safeguards reasonably designed to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in:

(i) investment banking services;

(ii) principal trading or sales and trading activities; and

(iii) other persons who might be biased in their judgment or supervision;

(I) prohibit direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the member as the result of an adverse, negative, or otherwise unfavorable debt research report or public appearance written or made by the debt research analyst that may adversely affect the member's present or prospective business interests;

(J) restrict or limit debt research analyst account trading in securities, any derivatives of such securities and any fund whose performance is materially dependent upon the performance of securities covered by the debt research analyst, including:

(i) ensuring that debt research analyst accounts, supervisors of debt research analysts and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from knowledge of the content or timing of a debt research report before the intended recipients of such debt research have had a reasonable opportunity to act on the information in the debt research report; and

(ii) providing that no debt research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent debt research report published by the member, and defining financial hardship circumstances, if any (e.g., unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account), in which the member will permit a debt research analyst account to trade in a manner inconsistent with such research analyst's most recently published recommendation;

(K) prohibit explicit or implicit promises of favorable debt research, a particular debt research rating or recommendation or specific debt research content as inducement for the receipt of business or compensation;

(L) restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity, including prohibiting:

(i) participation in pitches and other solicitations of investment banking services transactions; and

(ii) participation in road shows and other marketing on behalf of an issuer related to an investment banking services transaction;

(M) prohibit investment banking department personnel from directly or indirectly:

(i) directing a debt research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(ii) directing a debt research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction;

(N) prohibit prepublication review of a debt research report by a subject company for purposes other than verification of facts.

(c) **Content and Disclosure in Debt Research Reports**

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that:

(A) purported facts in its debt research reports are based on reliable information; and

(B) any recommendation or rating has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.

(2) A member that employs a rating system must clearly define in each debt research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. The definition of each rating must be consistent with its plain meaning.

(A) Irrespective of the rating system a member employs, a member must include in each debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company the percentage of all subject companies rated by the member to which the member would assign a "buy," "hold" or "sell" rating.

(B) A member must disclose in each debt research report the percentage of subject companies within each of the "buy," "hold" and "sell" categories for which the member has provided investment banking services within the previous 12 months.

(C) The information required in paragraphs (c)(2)(A) and (B) of this Rule must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the debt research report is less than 15 calendar days after the most recent calendar quarter.

(3) If a debt research report limited to the analysis of an issuer of a debt security contains a rating for the subject company, and the member has assigned a rating to such subject company for at least one year, the debt research report must show each date on which a member has assigned a rating and the rating assigned on such date. The member must include this information for the period that the member has assigned any rating or for a three-year period, whichever is shorter.

(4) A member must disclose in any debt research report at the time of publication or distribution of the report:

(A) if the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the debt research analyst has received compensation based upon (among other factors) the member's investment banking, sales and trading or principal trading revenues;

(C) if the member or any of its affiliates:

(i) managed or co-managed a public offering of securities for the subject company in the past 12 months;

(ii) received compensation for investment banking services from the subject company in the past 12 months; or

(iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;

(D) if, as of the end of the month immediately preceding the date of publication or distribution of a debt research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month) the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;

(E) if the subject company is, or over the 12-month period preceding the date of publication or distribution of the debt research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;

(F) if the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report;

(G) if the debt research analyst received any compensation from the subject company in the previous 12 months; and

(H) any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.

(5) A member or debt research analyst will not be required to make a disclosure required by paragraph (c)(4) of this Rule to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(6) Except as provided in subparagraph (7), the disclosures required by this paragraph (c) must be presented on the front page of debt research reports or the front page must refer to the page on which the disclosures are

found. Electronic debt research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by this Rule must be clear, comprehensive and prominent.

(7) A member that distributes a debt research report covering six or more subject companies (a "compendium report") may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports must include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to request the required disclosures and also may include a web address of the member where the disclosures can be found.

(d) **Disclosure in Public Appearances**

(1) A debt research analyst must disclose in public appearances:

(A) if the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if, to the extent the debt research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

(C) if the debt research analyst received any compensation from the subject company in the previous 12 months;

(D) if, to the extent the debt research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the debt research report, was, a client of the member. In such cases, the debt research analyst also must disclose the types of services provided to the subject company, if known by the debt research analyst; or

(E) any other material conflict of interest of the debt research analyst or member that the debt research analyst knows or has reason to know at the time of the public appearance.

(2) A member or debt research analyst will not be required to make a disclosure required by this paragraph (d) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(3) Members must maintain records of public appearances by debt research analysts sufficient to demonstrate compliance by those debt research analysts with the applicable disclosure requirements in this paragraph (d). Such records must be maintained for at least three years from the date of the public appearance.

(e) **Disclosure Required by Other Provisions**

In addition to the disclosures required by paragraphs (c) and (d) of this Rule, members and debt research analysts must comply with all applicable disclosure provisions of Rule 2210 and the federal securities laws.

(f) **Distribution of Member Research Reports**

A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that a debt research report is not distributed selectively to trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the debt research report.

(g) **Distribution of Third-Party Debt Research Reports**

(1) A member may not distribute third-party debt research if it knows or has reason to know such research is not objective or reliable.

(2) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purposes of this paragraph (g)(2) only, a member's obligation to review a third-party debt research report extends to any untrue statement of material fact or any false or misleading information that:

(A) should be known from reading the debt research report; or

(B) is known based on information otherwise possessed by the member.

(3) A member must accompany any third-party debt research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party debt research report provider or the subject company of a third-party debt research report, including the disclosures required by paragraphs (c)(4)(C), (c)(4)(F) and (c)(4)(H) of this Rule.

(4) A member shall not be required to review a third-party debt research report to determine compliance with paragraph (g)(2) of this Rule if such debt research report is an independent third-party debt research report.

(5) A member shall not be considered to have distributed a third-party debt research report for the purposes of paragraph (g)(3) where the research is an independent third-party debt research report and made available by a member (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent debt research on the solicited debt
security and the customer requests such independent debt research.

(6) A member must ensure that a third-party debt research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the debt research report.

(h) **Exemption for Members with Limited Investment Banking Activity**

The provisions of paragraphs (b)(2)(A)(i), (b)(2)(B), (b)(2)(C) (with respect to investment banking), (b)(2)(D)(i), (b)(2)(E) (with respect to investment banking), (b)(2)(G) and (b)(2)(H)(i) and (iii) of this Rule shall not apply to members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions; provided, however, that with respect to paragraph (b)(2)(H)(i) and (iii) of this Rule, such members must
establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including persons engaged in principal trading or sales and trading activities, who might be biased in their judgment or supervision. For the purposes of this paragraph (h), the term "investment banking services transactions" includes the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A)(i), (b)(2)(B), (b)(2)(C), (b)(2)(D)(i), (b)(2)(E), (b)(2)(G) and (b)(2)(H)(i) and (iii) of this Rule.

(i) **Exemption for Limited Principal Trading Activity**

The provisions of paragraphs (b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C) (with respect to sales and trading and principal trading), (b)(2)(D)(ii) and (iii), (b)(2)(E) (with respect to principal trading), (b)(2)(G) and (b)(2)(H)(ii) and (iii) of this Rule shall not apply to members where (1) in absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year; and (2) the member employs fewer than 10 debt traders; provided, however, that with respect to paragraph (b)(2)(H)(ii) and (iii) of this Rule, such members must establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C), (b)(2)(D)(ii) and (iii), (b)(2)(E), (b)(2)(G) and (b)(2)(H)(ii) and (iii) of this Rule.

(j) **Exemption for Debt Research Reports Provided to Institutional Investors**

(1) Except as provided in paragraphs (j)(2) and (j)(3) of this Rule, the provisions of this Rule shall not apply to the distribution of a debt research report to:

(A) A qualified institutional buyer where, pursuant to Rule 2111(b):

(i) the member or associated person has a reasonable basis to believe that the qualified institutional buyer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and

(ii) such qualified institutional buyer has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to Rule 2111 and such affirmation covers transactions in debt securities; so long as the member has provided written disclosure to the qualified institutional buyer that the member may provide debt research reports that are intended for institutional investors and that are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors. If the qualified institutional buyer does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the qualified institutional buyer has consented to receiving debt institutional research reports; or

(B) a person that meets the definition of "institutional account" in Rule 4512(c); provided that such person, prior to receipt of a debt research report, has affirmatively notified the member in writing that it wishes to receive institutional debt research and forego treatment as a retail investor for the purposes of this Rule.

(2) Notwithstanding paragraph (j)(1) of this Rule, a member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest described in paragraphs (b)(2)(A)(i), (b)(2)(H) (with respect to pressuring), (b)(2)(I), (b)(2)(K), (b)(2)(L), (b)(2)(M), (b)(2)(N) and Supplementary Material .02(a) of this Rule.

(3) Notwithstanding paragraph (j)(1) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of this Rule.

(4) Debt research reports provided to institutional investors pursuant to this exemption ("institutional debt research") must disclose prominently on the first page that:

(A) "This document is intended for institutional investors and is not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors."

(B) If applicable, "The views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors."

(C) If applicable, "This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report

(5) Notwithstanding paragraph (j)(4) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must disclose prominently the disclosures required by paragraphs (j)(4)(A) and (j)(4)(C) of this Rule.

(6) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors. A member may not rely on this exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor.

(7) This paragraph (j) does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.

(k) **Exemption for Good Cause**

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, conditionally or unconditionally grant an exemption from any requirement of this Rule for good cause shown after taking into account all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

• • • Supplementary Material: ----------

.1 Efforts to Solicit Investment Banking Business

FINRA interprets paragraph (b)(2)(L)(i) of this Rule to prohibit in pitch materials any information about a member's debt research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable debt research coverage. For example, FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. On the other hand, a member would be permitted to include in the pitch materials the fact of coverage and the name of the debt research analyst because such information alone does not imply favorable coverage. Members must consider whether the facts and circumstances of any solicitation or engagement would warrant disclosure under Section 17(b) of the Securities Act.

.2 Restrictions on Communications with Customers and Internal Personnel

(a) Consistent with the requirements of paragraph (b)(2)(M) of this Rule, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(b) FINRA interprets paragraph (b)(1)(C) of this Rule to, among other things, require that any written or oral communication by a debt research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

.3 Information Barriers between Research Analysts and Trading Desk Personnel

(a) FINRA interprets paragraph (b)(1)(C) of this Rule to, among other things, require members to establish, maintain and enforce written policies and procedures reasonably designed to prohibit:

(1) Sales and trading and principal trading personnel attempting to influence a debt research analyst's opinion or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers; and

(2) Debt research analysts identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports, or disclosing the timing of, or material investment conclusions in, a pending debt research report.

(b) The following communications between debt research analysts and sales and trading or principal trading personnel are permitted:

(1) Sales and trading and principal trading personnel may communicate customers' interests to a debt research analyst, so long as the debt research analyst does not respond by publishing debt research for the purpose of benefiting the trading position of the firm, a customer or a class of customers;
(2) Debt research analysts may provide customized analysis, recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending debt research, and that any subsequently published debt research is not for the purpose of benefiting the trading position of the firm, a customer or a class of customers;

(3) Sales and trading and principal trading personnel may seek the views of debt research analysts regarding the creditworthiness of the issuer of a debt security and other information regarding an issuer of a debt security

that is reasonably related to the price/performance of the debt security, so long as, with respect to any covered issuer, such information is consistent with the debt research analyst's published debt research report and consistent in nature with the types of communications that a debt research analyst might have with customers. In determining what is consistent with the debt research analyst's published debt research, a member may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the debt research analyst's published views; and

(4) Debt research analysts may seek information from sales and trading and principal trading personnel regarding a particular bond instrument, current prices, spreads, liquidity and similar market information relevant to the debt research analyst's valuation of a particular debt security.

(c) Communications between debt research analysts and sales and trading or principal trading personnel that are not related to sales and trading, principal trading or debt research activities may take place without restriction, unless otherwise prohibited.

.4 Disclosure of Compensation Received by Affiliates

A member may satisfy the disclosure requirement in paragraph (c)(4)(D) of this Rule with respect to receipt of non-investment banking services compensation by an affiliate by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. In addition, a member may satisfy the disclosure requirement in paragraph (c)(4)(C) of this Rule with respect to the receipt of investment banking compensation from a foreign sovereign by a non-U.S. affiliate of the member by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the non-U.S. affiliate as to whether such non-U.S. affiliate received or expects to receive such compensation from the foreign sovereign. However, a member must disclose compensation received by its affiliates from the subject company (including any foreign sovereign) in the past 12 months when the debt research analyst or an associated person with the ability to influence the content of a debt research report has actual knowledge that an affiliate received such compensation during that time period.

.5 Submission of Sections of a Draft Research Report for Factual Review

Consistent with the requirements of paragraphs (b)(2)(B) and (N) of this Rule, sections of a draft debt research report may be provided to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or to the subject company for factual review, if:

(a) the sections of the draft debt research report submitted do not contain the research summary, recommendation or rating;

(b) a complete draft of the debt research report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company; and

(c) if, after submitting sections of the draft debt research report to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company, the research department intends to change the proposed rating or recommendation, it must first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such debt research report for three years after publication.

.6 Distribution of Member Research Products

With respect to paragraph (f) of this Rule, a member may provide different debt research products and services to different classes of customers. For example, a member may offer one debt research product for those with a long-term investment horizon ("investor research") and a different debt research product for those customers with a short-term investment horizon ("trading research"). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. However, a member may not differentiate a debt research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a debt research product with substantially the same content as a different debt research product as a means to allow certain customers to trade in advance of other customers. In addition, a member that provides different debt research products and services for different customers must inform its other customers that receive a research product that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the

debt security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.

.7 Ability to Influence the Content of a Debt Research Report

For the purposes of this Rule, an associated person with the ability to influence the content of a debt research report is an associated person who is required to review the content of the debt research report or has exercised authority to review or change the debt research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a debt research report for compliance purposes but are not authorized to dictate a particular recommendation or rating.

.8 Obligations of Persons Associated with a Member

Consistent with Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to this Rule. In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of written policies and procedures required by this Rule or related Supplementary Material.

.9 Joint Due Diligence

FINRA interprets paragraph (b)(1)(C) to prohibit the performance of joint due diligence (i.e., confirming the adequacy of disclosure in offering or other disclosure documents for a transaction) by the debt research analyst in the presence of investment banking department personnel prior to the selection by the issuer of the underwriters for the investment banking services transaction.

.10 Divesting Research Analyst Holdings

With respect to paragraph (b)(2)(J)(ii), FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe; provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.

.11 Distribution of Institutional Debt Research During Transition Period

A member may distribute institutional debt research to any person that meets the definition of "institutional account" in Rule 4512(c), other than a natural person, for a period of up to one-year after July 16, 2015 ("the transition period"). After the transition period, a member must have obtained the necessary consent in either paragraph (j)(1)(A) or (j)(1)(B) to distribute institutional debt research to a person. Natural persons that qualify as an institutional account under Rule 4512(c) must provide affirmative written consent to receive institutional debt research during the year transition period and thereafter. This Supplementary Material .11 shall automatically sunset at the end of the transition period.

.12 Distribution of Institutional Debt Research to Non-U.S. Investors

The requirements of paragraphs (j)(1)(A) and (B) of this Rule shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that:

(a) The non-U.S. investor is not a customer of the member;

(b) The non-U.S. investor is a customer of the non-U.S. affiliate of the member; and

(c) The non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of "institutional account" in Rule 4512(c).

.13 Distribution of Institutional Debt Research for Informational Purposes

(a) A member may distribute institutional debt research reports to the persons described in paragraph (c) of this Supplementary Material .13 for informational purposes unrelated to investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that:

(1) The member may provide the recipient debt research reports that were prepared for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and

(2) The institutional debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities.

(b) If the person receiving institutional debt research pursuant to this Supplementary Material .13 does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research according to the terms of this Supplementary Material .13.

(c) Institutional debt research may be distributed for informational purposes unrelated to investing in debt securities pursuant to this Supplementary Material .13 to:

(1) Regulators for regulatory purposes;

(2) Academics for academic purposes;

(3) Issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and

(4) Media organizations for news gathering purposes.

.14 Public Appearances by Research Analysts

A member or debt research analyst will not be required to make a disclosure required by paragraph (d) of this Rule where attendance at the public appearance is limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Members must maintain records of public appearances by debt research analysts sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Such records must be maintained for at least three years from the date of the public appearance.

Amended by SR-FINRA-2016-017 eff. July 16, 2016;
Adopted by SR-FINRA-2014-048, SR-FINRA-2016-008, and SR-FINRA-2016-013 eff. July 16, 2016.
Selected Notice: 15-31

2264. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in paper or electronic form, and in a separate document (or contained by itself on a separate page as part of another document), the margin disclosure statement specified in this paragraph (a). In addition, any member that permits non-institutional customers either to open accounts online or to engage in transactions in securities online must post such margin disclosure statement on the member's Web site in a clear and conspicuous manner.

Margin Disclosure Statement

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.** A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities or assets in your account(s).

- **The firm can force the sale of securities or other assets in your account(s).** If the equity in your account falls below the maintenance margin requirements, or the firm's higher "house" requirements, the firm can sell the securities or other assets in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.

- **The firm can sell your securities or other assets without contacting you.** Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities or other assets in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.

- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.** Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.

- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.** These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).

- **You are not entitled to an extension of time on a margin call.** While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) Members shall with a frequency of not less than once a calendar year deliver individually, in paper or electronic form, the disclosure statement described in paragraph (a) or the following bolded disclosures to all non-institutional customers with margin accounts:

Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.**
- **The firm can force the sale of securities or other assets in your account(s).**
- **The firm can sell your securities or other assets without contacting you.**
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.**
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.**
- **You are not entitled to an extension of time on a margin call.**

The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document or on a separate page.

(c) In lieu of providing the disclosures specified in paragraphs (a) and (b), a member may provide to the customer and, to the extent required under paragraph (a) post on its Web site, an alternative disclosure statement, provided that the alternative disclosures shall be substantially similar to the disclosures specified in paragraphs (a) and (b).

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 4512(c).

Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2009-52 eff. Dec. 14, 2009.
Amended by SR-NASD-2002-69 eff. July 1, 2002.
Adopted by SR-NASD-2000-55 eff. June 4, 2001.
Selected Notices: 01-31, 02-35, 09-60.

2270. DAY-TRADING RISK DISCLOSURE STATEMENT

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to each customer, individually, in paper or electronic form, the disclosure statement specified in this paragraph (a). In addition, any member that is promoting a day-trading strategy, directly or indirectly, must post such disclosure statement on the member's Web site in a clear and conspicuous manner.

Day-Trading Risk Disclosure Statement

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a "day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses. Further, certain evidence indicates that an investment of less than $50,000 will significantly impair the ability of a day trader to make a profit. Of course, an investment of $50,000 or more will in no way guarantee success.

Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

Day trading will generate substantial commissions, even if the per trade cost is low. Day trading involves aggressive trading, and generally you will pay commissions on each trade. The total daily commissions that you pay on your trades will add to your losses or significantly reduce your earnings. For instance, assuming that a trade costs $16 and an average of 29 transactions are conducted per day, an investor would need to generate an annual profit of $111,360 just to cover commission expenses.

Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

Potential Registration Requirements. Persons providing investment advice for others or managing securities accounts for others may need to register as either an "Investment Adviser" under the Investment Advisers Act of 1940 or as a "Broker" or "Dealer" under the Securities Exchange Act of 1934. Such activities may also trigger state registration requirements.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, individually, in paper or electronic form, prior to opening the account, and post on its Web site, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with FINRA's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changes are recommended by FINRA, shall be withheld from use until any changes specified by FINRA have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, FINRA approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" shall have the meaning provided in Rule 2130(e).

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 4512(c).

(3) "Promoting a day-trading strategy" shall have the meaning provided in Rule 2130.01.

• • • Supplementary Material: ----------

.1 Review by FINRA's Advertising Regulation Department

A member may submit its retail communications to FINRA's Advertising Regulation Department for review and guidance on whether the content of the retail communications constitutes "promoting a day-trading strategy" for purposes of this Rule.

.2 Additional Rules Regarding Day Trading

Members should be aware that, in addition to general rules that may apply, FINRA has additional rules that specifically address day trading. See, e.g., Rule 2130 (Approval Procedures for Day-Trading Accounts); Rule 4210(f)(8)(B) (Margin Requirements) regarding special margin requirements for day trading.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-059 eff. Feb. 15, 2010.
Amended by SR-NASD-2002-69 eff. July 1, 2002.
Adopted by SR-NASD-99-41 eff. Oct. 16, 2000.
Selected Notices: 00-62, 02-35, 09-72.

3110. SUPERVISION

Supplementary Material .15 is effective from Apr 24, 2014 through Dec. 1 2015.

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by this Rule.

(2) The designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required.

(3) The registration and designation as a branch office or an office of supervisory jurisdiction (OSJ) of each location, including the main office, that meets the definitions contained in paragraph (f) of this Rule.

(4) The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member.

(5) The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities.

(6) The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.

(7) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(') or principal's(') place of business.

(b) Written Procedures

(1) **General Requirements**

Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

(2) **Review of Member's Investment Banking and Securities Business**

The supervisory procedures required by this paragraph (b) shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member.

(3) **Reserved.**

(4) **Review of Correspondence and Internal Communications**

The supervisory procedures required by this paragraph (b) shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business. The supervisory procedures must be appropriate for the member's business, size, structure, and customers. The supervisory procedures must require the member's review of:

(A) incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA rules and federal securities laws.

(B) internal communications to properly identify those communications that are of a subject matter that require review under FINRA rules and federal securities laws.

Reviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper.

(5) **Review of Customer Complaints**

The supervisory procedures required by this paragraph (b) shall include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

(6) **Documentation and Supervision of Supervisory Personnel**

The supervisory procedures required by this paragraph (b) shall set forth the supervisory system established by the member pursuant to paragraph (a) above, and shall include:

(A) the titles, registration status, and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and FINRA rules.

(B) a record, preserved by the member for a period of not less than three years, the first two years in an easily accessible place, of the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

(C) procedures prohibiting associated persons who perform a supervisory function from:

(i) supervising their own activities; and

(ii) reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising.

a. If a member determines, with respect to any of its supervisory personnel, that compliance with subparagraph (i) or (ii) above is not possible because of the member's size or a supervisory personnel's position within the firm, the member must document:

1. the factors the member used to reach such determination; and

2. how the supervisory arrangement with respect to such supervisory personnel otherwise complies with paragraph (a) of this Rule.

(D) procedures reasonably designed to prevent the supervisory system required pursuant to paragraph (a) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised.

(7) **Maintenance of Written Supervisory Procedures**

A copy of a member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the member. Each member shall promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including FINRA rules, and as changes occur in its supervisory system. Each member is responsible for promptly communicating its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review shall be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each member shall also retain a written record of the date upon which each review and inspection is conducted.

(A) Each member shall inspect at least annually (on a calendar-year basis) every OSJ and any branch office that supervises one or more non-branch locations.

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the member shall consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done at the location, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. If a member establishes a more frequent inspection cycle, the member must ensure that at least every three years, the inspection requirements enumerated in paragraph (c)(2) have been met. The member's written supervisory and inspection procedures shall set forth the non-supervisory branch office examination cycle, an explanation of the factors the member used in determining the frequency of the examinations in the cycle, and the manner in which a member will comply with paragraph (c)(2) if using more frequent inspections than every three years.

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The member's written supervisory and inspection procedures shall set forth the schedule and an explanation regarding how the member determined the frequency of the examination.

(2) An inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written.

(A) If applicable to the location being inspected, that location's written inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(i) safeguarding of customer funds and securities;

(ii) maintaining books and records;

(iii) supervision of supervisory personnel;

(iv) transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts; from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks; and

(v) changes of customer account information, including address and investment objectives changes and validation of such changes.

(B) The policies and procedures required by paragraph (c)(2)(A)(iv) must include a means or method of customer confirmation, notification, or follow-up that can be documented. Members may use reasonable risk-based criteria to determine the authenticity of the transmittal instructions.

(C) The policies and procedures required by paragraph (c)(2)(A)(v) must include, for each change processed, a means or method of customer confirmation, notification, or follow-up that can be documented and that complies with SEA Rules 17a-3(a)(17)(i)(B)(2) and 17a-3(a)(17)(i)(B)(3).

(D) If a member does not engage in all of the activities enumerated in paragraphs (c)(2)(A)(i) through (c)(2)(A)(v) at the location being inspected, the member must identify those activities in the member's written supervisory procedures or the location's written inspection report and document in the member's written supervisory procedures or the location's written inspection report that supervisory policies and procedures for such activities must be in place at that location before the member can engage in them.

(3) For each inspection conducted pursuant to paragraph (c), a member must:

(A) have procedures reasonably designed to prevent the effectiveness of the inspections required pursuant to paragraph (c)(1) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the location being inspected, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and

(B) ensure that the person conducting an inspection pursuant to paragraph (c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.

(C) If a member determines that compliance with paragraph (c)(3)(B) is not possible either because of a member's size or its business model, the member must document in the inspection report both the factors the member used to make its determination and how the inspection otherwise complies with paragraph (c)(1).

(d) Transaction Review and Investigation

(1) Each member shall include in its supervisory procedures a process for the review of securities transactions that are reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive device that are effected for the:

(A) accounts of the member;

(B) accounts introduced or carried by the member in which a person associated with the member has a beneficial interest or the authority to make investment decisions;

(C) accounts of a person associated with the member that are disclosed to the member pursuant to Rule 3210; and

(D) covered accounts.

(2) Each member must conduct promptly an internal investigation into any such trade to determine whether a violation of those laws or rules has occurred.

(3) A member engaging in investment banking services must file with FINRA, written reports, signed by a senior officer of the member, at such times and, without limitation, including such content, as follows:

(A) within ten business days of the end of each calendar quarter, a written report describing each internal investigation initiated in the previous calendar quarter pursuant to paragraph (d)(2), including the identity of the member, the date each internal investigation commenced, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and, with respect to each internal investigation, the identity of the security, trades, accounts, associated persons of the member, or associated person of the member's family members holding a covered account, under review, and that includes a copy of the member's policies and procedures required by paragraph (d)(1).

(B) within five business days of completion of an internal investigation pursuant to paragraph (d)(2) in which it was determined that a violation of the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices had occurred, a written report detailing the

completion of the investigation, including the results of the investigation, any internal disciplinary action taken, and any referral of the matter to FINRA, another self-regulatory organization, the SEC, or any other federal, state, or international regulatory authority.

(4) Definitions

For purposes of this Rule:

(A) The term "covered account" shall include any account introduced or carried by the member that is held by:

(i) the spouse of a person associated with the member;

(ii) a child of the person associated with the member or such person's spouse, provided that the child resides in the same household as or is financially dependent upon the person associated with the member;

(iii) any other related individual over whose account the person associated with the member has control; or

(iv) any other individual over whose account the associated person of the member has control and to whose financial support such person materially contributes.

(B) The term "investment banking services" shall include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(e) Responsibility of Member to Investigate Applicants for Registration

Each member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.

If the applicant previously has been registered with FINRA or another self-regulatory organization, the member shall review a copy of the applicant's most recent Form U5, including any amendments thereto, within 60 days of the filing date of an application for registration, or demonstrate to FINRA that it has made reasonable efforts to do so. In conducting its review of the Form U5, the member shall take such action as may be deemed appropriate.

The member shall also review an applicant's employment experience to determine if the applicant has been recently employed by a Futures Commission Merchant or an Introducing Broker that is notice-registered with the SEC pursuant to Section 15(b)(11) of the Exchange Act. In such a case, the member shall also review a copy of the applicant's most recent CFTC Form 8-T, including any amendments thereto, within 60 days of the filing date of an application for registration, or demonstrate to FINRA that it has made reasonable efforts to do so. In conducting its review of a Form 8-T, the member shall take such action as may be deemed appropriate.

In addition, each member shall establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's initial or transfer Form U4 no later than 30 calendar days after the form is filed with FINRA. Such procedures shall, at a minimum, provide for a search of reasonably available public records to be conducted by the member, or a third-party service provider, to verify the accuracy and completeness of the information contained in the applicant's initial or transfer Form U4.

(f) Definitions

(1) "Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place:

(A) order execution or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds or securities;

(D) final acceptance (approval) of new accounts on behalf of the member;

(E) review and endorsement of customer orders, pursuant to paragraph (b)(2) above;

(F) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or

(G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

(2)

(A) A "branch office" is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(i) Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) Any location that is the associated person's primary residence; provided that:

a. Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

b. The location is not held out to the public as an office and the associated person does not meet with customers at the location;

c. Neither customer funds nor securities are handled at that location;

d. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

e. The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

f. Electronic communications (e.g., e-mail) are made through the member's electronic system;

g. All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

h. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

i. A list of the residence locations is maintained by the member;
(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of subparagraphs (2)(A)(ii)a. through h. above;

(iv) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any

one calendar year; provided that any retail communication identifying such location

also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(C) The term "business day" as used in paragraph (e)(2)(A) of this Rule shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

• • • Supplementary Material: ----------

.1 Registration of Main Office

A member's main office location is required to be registered and designated as a branch office or OSJ if it meets the definitions of a "branch office" or "office of supervisory jurisdiction" as set forth in Rule 3110(e). In general, the nature of activities conducted at a main office will satisfy the requirements of such terms.

.2 Designation of Additional OSJs

In addition to the locations that meet the definition of OSJ in Rule 3110(e), each member shall also register and designate other offices as OSJs as is necessary to supervise its associated persons in accordance with the standards set forth in Rule 3110. In making a determination as to whether to designate a location as an OSJ, the member should consider the following factors:

(a) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(b) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(c) whether the location is geographically distant from another OSJ of the firm;

(d) whether the member's registered persons are geographically dispersed; and

(e) whether the securities activities at such location are diverse or complex.

.3 Supervision of Multiple OSJs by a Single Principal

Rule 3110(a)(4) requires a member to designate one or more appropriately registered principals in each OSJ with the authority to carry out the supervisory responsibilities assigned to that office ("on-site principal"). The designated on-site principal for each OSJ must have a physical presence, on a regular and routine basis, at each OSJ for which the principal has supervisory responsibilities. Consequently, there is a general presumption that a principal will not be designated and assigned to be the on-site principal pursuant to Rule 3110(a)(4) to supervise more than one OSJ. If a member determines it is necessary to designate and assign one appropriately registered principal to be the on-site principal pursuant to Rule 3110(a)(4) to supervise two or more OSJs, the member must take into consideration, among others, the following factors:

(a) whether the on-site principal is qualified by virtue of experience and training to supervise the activities and associated persons in each location;

(b) whether the on-site principal has the capacity and time to supervise the activities and associated persons in each location;

(c) whether the on-site principal is a producing registered representative;

(d) whether the OSJ locations are in sufficiently close proximity to ensure that the on-site principal is physically present at each location on a regular and routine basis; and

(e) the nature of activities at each location, including size and number of associated persons, scope of business activities, nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

The member must establish, maintain, and enforce written supervisory procedures regarding the supervision of all OSJs. In all cases where a member designates and assigns one on-site principal to supervise more than one OSJ, the member must document in the member's written supervisory and inspection procedures the factors used to determine why the member considers such supervisory structure to be reasonable and the determination by the member will be subject to scrutiny.

.4 Annual Compliance Meeting.

A member is not required to conduct in-person meetings with each registered person or group of registered persons to comply with the annual compliance meeting (or interview) required by Rule 3110(a)(7). A member that chooses to conduct compliance meetings using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone, or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting (e.g., an on-demand annual compliance webcast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you go confirmation, and have an attestation of completion at the end of a webcast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (e.g., an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site).

.5 Risk-based Review of Member's Investment Banking and Securities Business

A member may use a risk-based review system to comply with Rule 3110(b)(2)'s requirement that a registered principal review, all transactions relating to the investment banking or securities business of the member. A member is not required to conduct detailed reviews of each transaction if a member is using a reasonably designed risk-based review system that provides a member with sufficient information that permits the member to focus on the areas that pose the greatest numbers and risks of violation.

.6 Risk-based Review of Correspondence and Internal Communications

By employing risk-based principles, a member must decide the extent to which additional policies and procedures for the review of:

(a) incoming and outgoing written (including electronic) correspondence that fall outside of the subject matters listed in Rule 3110(b)(4) are necessary for its business and structure. If a member's procedures do not require that all correspondence be reviewed before use or distribution, the procedures must provide for:

(1) the education and training of associated persons regarding the firm's procedures governing correspondence;

(2) the documentation of such education and training; and

(3) surveillance and follow-up to ensure that such procedures are implemented and followed.

(b) internal communications that are not of a subject matter that require review under FINRA rules and federal securities laws are necessary for its business and structure.

.7 Evidence of Review of Correspondence and Internal Communications

The evidence of review required in Rule 3110(b)(4) must be chronicled either electronically or on paper and must clearly identify the reviewer, the internal communication or correspondence that was reviewed, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review. Merely opening a communication is not sufficient review.

.8 Delegation of Correspondence and Internal Communication Review Functions

In the course of the supervision and review of correspondence and internal communications required by Rule 3110(b)(4), a supervisor/principal may delegate certain functions to persons who need not be registered. However, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews, irrespective of whether he or she delegates functions related to the review. Accordingly, supervisors/principals must take reasonable and appropriate action to ensure delegated functions are properly executed and should evidence performance of their procedures sufficiently to demonstrate overall supervisory control.

.9 Retention of Correspondence and Internal Communications

Each member shall retain the internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a-4(b). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records, and the retained records shall be readily available to FINRA, upon request.

.10 Supervision of Supervisory Personnel

A member's determination that it is not possible to comply with paragraphs (b)(6)(C)(i) or (b)(6)(C)(ii) of Rule 3110 prohibiting supervisory personnel from supervising their own activities and from reporting to, or otherwise having compensation or continued employment determined by, a person or persons they are supervising generally will arise in instances where:

(a) the member is a sole proprietor in a single-person firm;

(b) a registered person is the member's most senior executive officer (or similar position); or

(c) a registered person is one of several of the member's most senior executive officers (or similar positions).

.11 Use of Electronic Media to Communicate Written Supervisory Procedures

A member may use electronic media to satisfy its obligation to communicate its written supervisory procedures, and any amendment thereto, pursuant to Rule 3110(b)(7), provided that: (1) the written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom such supervisory procedures apply based on their activities and responsibilities through, for example, the member's intranet system; (2) all amendments to the written supervisory procedures are promptly posted to the member's electronic media; (3) associated persons are notified that amendments relevant to their activities and responsibilities have been made to the written supervisory procedures; (4) the member has reasonable procedures to monitor and maintain the security of the material posted to ensure that it cannot be altered by unauthorized persons; and (5) the member retains current and prior versions of its written supervisory procedures in compliance with the applicable record retention requirements of SEA Rule 17a-4(e)(7).

.12 Standards for Reasonable Review

In fulfilling its obligations under Rule 3110(c), each member must conduct a review, at least annually, of the businesses in which it engages. The review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with FINRA rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags"), etc. The procedures established and reviews conducted must provide that the quality of supervision at remote locations is sufficient to ensure compliance with applicable securities laws and regulations and with FINRA rules. A member must be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations.

.13 General Presumption of Three-Year Limit for Periodic Inspection Schedules

Rule 3110(c)(1)(C) requires a member to inspect on a regular periodic schedule every non-branch location. In establishing a non-branch location inspection schedule, there is a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., "red flags"). If a member establishes a longer periodic inspection schedule, the member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

.14 Exception to Persons Prohibited from Conducting Inspections

A member's determination that it is not possible to comply with Rule 3110(c)(3)(B) with respect to who is not allowed to conduct a location's inspection will generally arise in instances where:

(a) the member has only one office; or

(b) the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager.

.15 Temporary Program to Address Underreported Form U4 Information

FINRA is establishing a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M (unsatisfied judgments or liens) if the Form U4 amendment is filed between April 24, 2014 and December 1, 2015 and one of the following conditions is met: (1) the judgment or lien has been satisfied, and at the time it was unsatisfied, it was under $5,000 and the date the judgment or lien was filed with a court (as reported on Form U4 Judgment/Lien DRP, Question 4.A.) was on or before August 13, 2012; or (2) the unsatisfied judgment or lien was satisfied within 30 days after the individual learned of the judgment or lien (as reported on Form U4 Judgment/Lien DRP, Question 4.B.). This program has a retroactive effective date of April 24, 2014, and it will automatically sunset on December 1, 2015. Members will not be able to use the program after December 1, 2015.

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* Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed “holding out” for purposes of this section.

Amended by SR-FINRA-2017-004 eff. April 3, 2017.
Amended by SR-FINRA-2015-005 eff. July 31, 2015.
Amended by SR-FINRA-2014-038 eff. July 1, 2015.
Amended by SR-FINRA-2013-025 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-038 eff. April 24, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2007-008 eff. Dec. 19, 2007.
Amended by SR-NASD-2006-037 eff. July 3, 2006.
Amended by SR-NASD-2005-033 eff. Aug. 1, 2005.
Amended by SR-NASD-2005-004 eff. July 25, 2005
Amended by SR-NASD-2002-162 and SR-NASD-2004-116 eff. Jan. 31, 2005.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-2002-04 eff. Oct. 14, 2002.
Amended by SR-NASD-99-28 eff. Aug. 16, 1999.
Amended by SR-NASD-98-52 eff. March 15, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Amended by SR-NASD-97-69 eff. August 17, 1998.
Amended by SR-NASD-98-45 postponed eff. date of provision in Notice to Members 98-11.
Amended by SR-NASD-98-31 eff. Apr. 7, 1998, postponed eff. date of provision in Notice to Members.
Amended by SR-NASD-98-10 postponed eff. date.
Amended by SR-NASD-97-24 eff. Feb. 15, 1998.
Amended by SR-NASD-97-41 eff. Sept. 4, 1997.
Amended eff. June 12, 1989; Apr. 30, 1992.
Selected Notices to Members: 86-65, 88-84, 89-34, 89-57, 91-48, 92-18, 96-33, 96-59, 96-98-11, 98-18, 98-38, 98-52, 98-96, 99-03, 99-45, 04-71, 05-67, 06-13, 07-64, 14-10.

3160. Networking Arrangements Between Members and Financial Institutions

(a) **Standards for Member Conduct**

Except as otherwise provided in this Rule, a member that is a party to a networking arrangement under which the member conducts broker-dealer services on or off the premises of a financial institution is subject to the following requirements:

(1) **Setting**

A member that conducts broker-dealer services on the premises of a financial institution shall:

(A) be clearly identified as the person providing broker-dealer services and shall distinguish its broker-dealer services from the services of the financial institution;

(B) conduct its broker-dealer services in an area that displays clearly the member's name; and

(C) to the extent practicable, maintain its broker-dealer services in a location physically separate from the routine retail deposit-taking activities of the financial institution.

(2) **Networking Agreements**

(A) Networking arrangements between a member and a financial institution shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements and include all broker-dealer obligations, as applicable, set forth in Rule 701 of SEC Regulation R. Independent of their contractual obligations, members shall comply with all broker-dealer obligations, as applicable, under Rule 701 of SEC Regulation R.

(B) The member shall ensure that the written agreement stipulates that supervisory personnel of the member and representatives of the SEC and FINRA will be permitted access to the financial institution's premises where the member conducts broker-dealer services, as applicable, in order to inspect the books and records and other relevant information maintained by the member with respect to its broker-dealer services.

(3) **Customer Disclosure**

(A) At or prior to the time that a customer account is opened by a member that is a party to a networking arrangement, the member shall disclose in writing to each customer that the broker-dealer services are being provided by the member and not by the financial institution, and that the securities products purchased or sold in a transaction are:

(i) not insured by the Federal Deposit Insurance Corporation ("FDIC");

(ii) not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(iii) subject to investment risks, including possible loss of the principal invested.

(B) The disclosures required by paragraph (a)(3)(A) of this Rule also shall be made orally by a member that is a party to a networking arrangement for any customer account opened on the premises of a financial institution.

(4) **Communications with the Public**

(A) All member confirmations and account statements shall indicate clearly that the broker-dealer services are being provided by the member.

B) Retail communications, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, that announce the location of a financial institution where broker-dealer services are provided by the member or promote the name or services of the financial institution or that are distributed by the member on the premises of a financial institution or at such other location where the financial institution is present or represented shall include the disclosures required by paragraph (a)(3) of this Rule. The following legend may be used to provide these disclosures in retail communications, provided that such disclosures are displayed in a conspicuous manner:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

(C) As long as the omission of the disclosures required by paragraph (a)(4)(B) of this Rule would not cause the retail communications to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:

(i) radio broadcasts of 30 seconds or less;

(ii) electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but excluding messages contained in such media as television, online services or ATMs; and

(iii) signs, such as banners and posters, when used only as location indicators.

(5) **Notifications of Terminations**

A member shall promptly notify the financial institution if any associated person of the member who is employed by the financial institution is terminated for cause by the member.

(b) **Definitions**

For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Financial institution" shall mean federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

(2) "Networking arrangement" shall mean a contractual or other written agreement between a member and a financial institution under which the member offers broker-dealer services on or off the premises of the financial institution.

(3) "Broker-dealer services" shall mean investment banking or securities business as defined in Article I of the FINRA By-Laws.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.

Amended by SR-FINRA-2010-023 eff. June 14, 2010.

Amended by SR-FINRA-2009-047 eff. June 14, 2010.

Adopted by SR-NASD-95-63 eff. Feb. 15, 1998.

Selected Notices: 94-94, 96-3, 97-26, 97-89, 10-21

3230. TELEMARKETING

(a) General Telemarketing Requirements

No member or person associated with a member shall initiate any outbound telephone call to:

(1) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

(A) the member has an established business relationship with the person pursuant to paragraph (m)(12)(A),

(B) the member has received that person's prior express invitation or permission, or

(C) the person called is a broker or dealer;

(2) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or

(3) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) National Do-Not-Call List Exceptions

A member making outbound telephone calls will not be liable for violating paragraph (a)(3) if:

(1) Established Business Relationship Exception

The member has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member;

(2) Prior Express Written Consent Exception

The member has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act) between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or

(3) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision

A member or person associated with a member making outbound telephone calls will not be liable for violating paragraph (a)(3) if the member or person associated with a member demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

(1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;

(2) Training of personnel. The member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and

(4) Accessing the national do-not-call database. The member uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(d) Procedures

Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the member on whose behalf the outbound telephone call is made, the member on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(4) Identification of sellers and telemarketers. A member or person associated with a member making an outbound telephone call must provide the called party with the name of the individual caller, the name of the member, an address or telephone number at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A member making outbound telephone calls must maintain a record of a person's request not to receive further calls.

(e) Wireless Communications

The provisions set forth in this Rule are applicable to members and persons associated with a member making outbound telephone calls to wireless telephone numbers.

(f) Outsourcing Telemarketing

If a member uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in this Rule.

(g) Caller Identification Information

(1) Any member that engages in telemarketing, as defined in paragraph (m)(20) of this Rule, must transmit or cause to be transmitted the telephone number, and, when made available by the member's telephone carrier, the name of the member, to any caller identification service in use by a recipient of an outbound telephone call.

(2) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(3) Any member that engages in telemarketing, as defined in paragraph (m)(20) of this Rule, is prohibited from blocking the transmission of caller identification information.

(h) Unencrypted Consumer Account Numbers

No member or person associated with a member shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

(i) Submission of Billing Information

For any telemarketing transaction, a member or person associated with a member must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(1) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the member or person associated with a member must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(1)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction

(2) In any other telemarketing transaction involving preacquired account information not described in paragraph (i)(1), the member or person associated with a member must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(2)(A).

(j) Abandoned Calls

(1) No member or person associated with a member shall "abandon" any outbound telephone call. An outbound telephone call is "abandoned" if a person answers it and the call is not connected to a person associated with a member within two seconds of the person's completed greeting.

(2) A member or person associated with a member shall not be liable for violating paragraph (j)(1) if:

(A) the member or person associated with a member employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the member or person associated with a member, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a person associated with a member is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the member or person associated with a member promptly plays a recorded message that states the name and telephone number of the member or person associated with the member on whose behalf the call was placed; and

(D) the member retains records establishing compliance with paragraph (j)(2).

(k) Prerecorded Messages

(1) No member or person associated with a member shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(2)(C) unless:

(A) the member has obtained from the recipient of the call an express agreement, in writing, that:

(i) the member obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member to place prerecorded calls to such person;

(ii) the member obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(iii) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific member; and

(iv) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the member or person associated with a member allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(4), followed immediately by a disclosure of one or both of the following:

(i) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the member's procedures instituted under paragraph (d)(3) at any time during the message. The mechanism must:

a. automatically add the number called to the member's firm-specific do-not-call list;

b. once invoked, immediately disconnect the call; and

c. be available for use at any time during the message;

(ii) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the member's procedures instituted under paragraph (d)(3). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

a. automatically adds the number called to the member's firm-specific do-not-call list;

b. immediately thereafter disconnects the call; and

c. is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the member complies with all other requirements of this Rule and other applicable federal and state laws.

(2) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

(l) Credit Card Laundering.

Except as expressly permitted by the applicable credit card system, no member or person associated with a member shall:

(1) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member;.

(2) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or.

(3) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(m) Definitions

For purposes of this Rule:

(1) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(3) The term “billing information” means any data that enables any person to access a customer's or donor's account, for example a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number.

(4) The term "broker-dealer of record" refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

(5) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(6) The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(7) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(9) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(10) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(11) The term “customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

(12) The term “established business relationship" means a relationship between a member and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the member or at a clearing firm that provides clearing services to such member within the previous 18 months immediately preceding the date of the telemarketing call;

(B) the member is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(C) the person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

A person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member's affiliate does not extend to the member unless the person would reasonably expect the member to be included.

(13) The term “free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(14) The term “merchant” means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(15) The term “merchant agreement” means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(16) The term “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A “donor” means any person solicited to make a charitable contribution.

(17) Them term “person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(18) The term "personal relationship" means any family member, friend, or acquaintance of the person associated with a member making an outbound telephone call.

(19) The term “preacquired account information” means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(20) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit

customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

• • • Supplementary Material: ----------

.1 Compliance with Other Requirements

This Rule does not affect the obligation of any member or person associated with a member that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101–6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2012-027 eff. July 9, 2012.
Amended by SR-FINRA-2011-059 eff. June 29, 2012.
Amended by SR-NASD-2004-174 eff. March 1, 2005.
Amended by SR-NASD-2003-131 eff. March 31, 2004.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Adopted by SR-NASD-96-28 eff. Dec. 2, 1996.
Selected Notice: 04-15, 05-07, 12-17.

8210. Provision of Information and Testimony and Inspection and Copying of Books

(a) Authority of Adjudicator and FINRA Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to:

(1) require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control.

(b) Other SROs and Regulators

(1) FINRA staff may enter into an agreement with a domestic federal agency, or subdivision thereof, or foreign regulator to share any information in FINRA's possession for any regulatory purpose set forth in such agreement, provided that the agreement must require the other regulator, in accordance with the terms of the agreement, to treat any shared information confidentially and to assert such confidentiality and other applicable privileges in response to any requests for such information from third parties.

Any such agreement with a foreign regulator must also meet the following conditions:

(A) the other regulator party to the agreement must have jurisdiction over common regulatory matters; and

(B) the agreement must require the other regulator to reciprocate and share with FINRA information of regulatory interest or concern to FINRA.

(2) FINRA staff may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which FINRA has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) Requirement to Comply

No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

(d) Notice

A notice under this Rule shall be deemed received by the member or currently or formerly registered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. With respect to a person who is currently associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the member as reflected in the Central Registration Depository. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person upon personal service, as set forth in Rule 9134(a)(1).

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository; and

(2) any other more current address of the member or the person known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice.

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person knows that the member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the member or person, and any notice served upon counsel shall be deemed received by the member or person.

(e) Electronic Interface

In carrying out its responsibilities under this Rule, FINRA may, as appropriate, establish programs for the submission of information to FINRA on a regular basis through a direct or indirect electronic interface between FINRA and members.

(f) Inspection and Copying

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in a FINRA investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, FINRA staff may for good cause deny such request.

(g) Encryption of Information Provided in Electronic Form

(1) Any member or person who, in response to a request pursuant to this Rule, provides the requested information on a portable media device must ensure that such information is encrypted.

(2) For purposes of this Rule, a "portable media device" is a storage device for electronic information, including but not limited to a flash drive, CD-ROM, DVD, portable hard drive, laptop computer, disc, diskette, or any other portable device for storing and transporting electronic information.

(3) For purposes of this Rule, "encrypted" means the transformation of data into a form in which meaning cannot be assigned without the use of a confidential process or key. To ensure that encrypted information is secure, a member or person providing encrypted information to FINRA staff pursuant to this Rule shall (a) use an encryption method that meets industry standards for strong encryption, and (b) provide the confidential process or key regarding the encryption to FINRA staff in a communication separate from the encrypted information itself.

• • • Supplementary Material: ----------

.01 Books and Records Relating to Investigations

This rule requires FINRA members, associated persons and persons subject to FINRA's jurisdiction to provide FINRA staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such member or person," paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its associated persons make or keep relating to its operation as a broker-dealer or relating to the person's association with the member. This includes but is not limited to records relating to a FINRA investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules, and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a member or associated person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the member. The rule requires, however, that a FINRA member, associated person, or person subject to FINRA's jurisdiction must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the FINRA member, associated person or person subject to FINRA's jurisdiction controls or has a right to demand them.

Amended by SR-FINRA-2009-060 eff. Feb 25, 2013.
Amended by SR-FINRA-2010-021 eff. Dec. 29, 2010.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Amended by SR-FINRA-2008-056 eff. Nov. 6, 2008.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-97-81 eff. Jan. 16, 1998 (formerly Rule 4615).
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-96-46 eff. May 9, 1997.
Amended by SR-NASD-96-14 eff. Aug. 13, 1996.
Amended eff. Apr. 15, 1992.
Sec. 4 redesignated Sec. 5 eff. Sept. 1, 1969.
Selected Notices: 86-36, 92-19, 96-58, 99-16, 08-57, 10-59, 13-06.

Capital Acquisition Broker Rules

201. Standards of Commercial Honor and Principles of Trade

All capital acquisition brokers are subject to FINRA Rule 2010.

221. Communications with the Public

(a) No communication with the public by a capital acquisition broker may:

(1) include any false, exaggerated, unwarranted, promissory or misleading statement or claim;

(2) omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;

(3) state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the capital acquisition broker-dealer's business practices; or

(4) imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

(b) All communications by a capital acquisition broker must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.

Adopted by SR-FINRA-2015-054.
Selected Notice: 16-37.

FUNDING PORTAL CONDUCT RULE

200. Funding Portal Conduct

(a) Standards of Commercial Honor and Principles of Trade

A funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

(b) Use of Manipulative, Deceptive or Other Fraudulent Devices

No funding portal member shall effect any transaction in, or induce the purchase or sale of, any security by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

(c) Communications with the Public

(1) Definition of "Funding Portal Communication"
For purposes of this Rule, the term "funding portal communication" means any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.

(2) Content Standards

(A) No funding portal communication may:

(i) include any false, exaggerated, unwarranted, promissory or misleading statement or claim;

(ii) omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;

(iii) state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member's business practices; or

(iv) predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment.

(B) All funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced.

(C) All funding portal member communications must prominently disclose the name of the funding portal member, or the name under which the funding portal member primarily conducts business as disclosed on the member's Form FP-NMA.

(3) Issuer Communications
The content standards of paragraphs (c)(2)(A) and (B) of this Rule shall not apply to any communication on the funding portal member's website that is prepared solely by an issuer; provided, however, that no funding portal member may include on its website any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Adopted by SR-FINRA-2015-040 eff. Jan. 29, 2016
Selected Notice: 16-06.

SECURITIES ACT OF 1933

230.134 COMMUNICATIONS NOT DEEMED A PROSPECTUS

Except as provided in paragraphs (e) and (g) of this section, the terms "prospectus" as defined in section 2(a)(10) of the Act or "free writing prospectus" as defined in Rule 405 (§230.405) shall not include a communication limited to the statements required or permitted by this section, provided that the communication is published or transmitted to any person only after a registration statement relating to the offering that includes a prospectus satisfying the requirements of section 10 of the Act (except as otherwise permitted in paragraph (a) of this section) has been filed.

(a) Such communication may include any one or more of the following items of information, which need not follow the numerical sequence of this paragraph, provided that, except as to paragraphs (a) (4) through (6) of this section, the prospectus included in the filed registration statement does not have to include a price range otherwise required by rule:

(1) Factual information about the legal identity and business location of the issuer limited to the following: the name of the issuer of the security, the address, phone number, and e-mail address of the issuer's principal offices and contact for investors, the issuer's country of organization, and the geographic areas in which it conducts business;

(2) The title of the security or securities and the amount or amounts being offered, which title may include a designation as to whether the securities are convertible, exercisable, or exchangeable, and as to the ranking of the securities;

(3) A brief indication of the general type of business of the issuer, limited to the following:

(i) In the case of a manufacturing company, the general type of manufacturing, the principal products or classes of products manufactured, and the segments in which the company conducts business;

(ii) In the case of a public utility company, the general type of services rendered, a brief indication of the area served, and the segments in which the company conducts business;

(iii) In the case of an asset-backed issuer, the identity of key parties, such as sponsor, depositor, issuing entity, servicer or servicers, and trustee, the asset class of the transaction, and the identity of any credit enhancement or other support; and

(iv) In the case of any other type of company, a corresponding statement;

(4) The price of the security, or if the price is not known, the method of its determination or the *bona fide* estimate of the price range as specified by the issuer or the managing underwriter or underwriters;

(5) In the case of a fixed income security, the final maturity and interest rate provisions or, if the final maturity or interest rate provisions are not known, the probable final maturity or interest rate provisions, as specified by the issuer or the managing underwriter or underwriters;

(6) In the case of a fixed income security with a fixed (non-contingent) interest rate provision, the yield or, if the yield is not known, the probable yield range, as specified by the issuer or the managing underwriter or underwriters and the yield of fixed income securities with comparable maturity and security rating;

(7) A brief description of the intended use of proceeds of the offering, if then disclosed in the prospectus that is part of the filed registration statement;

(8) The name, address, phone number, and e-mail address of the sender of the communication and the fact that it is participating, or expects to participate, in the distribution of the security;

(9) The type of underwriting, if then included in the disclosure in the prospectus that is part of the filed registration statement;

(10) The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate;

(11) The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations, and procedures for attending or otherwise accessing them);

(12) A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with the issuer or an underwriter or participating dealer (including procedures regarding account-opening and submitting indications of interest and conditional offers to buy), and procedures regarding directed share plans and other participation in offerings by officers, directors, and employees of the issuer;

(13) Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies, or similar investors under the laws of any State or Territory or the District of Columbia, and the permissibility or status of the investment under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.];

(14) Whether, in the opinion of counsel, the security is exempt from specified taxes, or the extent to which the issuer has agreed to pay any tax with respect to the security or measured by the income therefrom;

(15) Whether the security is being offered through rights issued to security holders, and, if so, the class of securities the holders of which will be entitled to subscribe, the subscription ratio, the actual or proposed record date, the date upon which the rights were issued or are expected to be issued, the actual or anticipated date upon which they will expire, and the approximate subscription price, or any of the foregoing;

(16) Any statement or legend required by any state law or administrative authority;

(17) [Reserved]

(18) The names of selling security holders, if then disclosed in the prospectus that is part of the filed registration statement;

(19) The names of securities exchanges or other securities markets where any class of the issuer's securities are, or will be, listed;

(20) The ticker symbols, or proposed ticker symbols, of the issuer's securities;

(21) The CUSIP number as defined in Rule 17Ad-19(a)(5) of the Securities Exchange Act of 1934 (§240.17Ad-19(a)(5) of this chapter) assigned to the securities being offered; and

(22) Information disclosed in order to correct inaccuracies previously contained in a communication permissibly made pursuant to this section.

(b) Except as provided in paragraph (c) of this section, every communication used pursuant to this section shall contain the following:

(1) If the registration statement has not yet become effective, the following statement:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective; and

(2) The name and address of a person or persons from whom a written prospectus for the offering meeting the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405) including as to the identified paragraphs above a price range where required by rule, may be obtained.

(c) Any of the statements or information specified in paragraph (b) of this section may, but need not, be contained in a communication which:

(1) Does no more than state from whom and include the uniform resource locator (URL) where a written prospectus meeting the requirements of section 10 of the Act (other than a free writing

prospectus as defined in Rule 405) may be obtained, identify the security, state the price thereof and state by whom orders will be executed; or

(2) Is accompanied or preceded by a prospectus or a summary prospectus, other than a free writing prospectus as defined in Rule 405, which meets the requirements of section 10 of the Act, including a price range where required by rule, at the date of such preliminary communication.

(d) A communication sent or delivered to any person pursuant to this section which is accompanied or preceded by a prospectus which meets the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405), including a price range where required by rule, at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate whether he or she might be interested in the security, if the communication contains substantially the following statement:

No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date.

Provided, that such statement need not be included in such a communication to a dealer.

(e) A section 10 prospectus included in any communication pursuant to this section shall remain a prospectus for all purposes under the Act.

(f) The provision in paragraphs (c)(2) and (d) of this section that a prospectus that meets the requirements of section 10 of the Act precede or accompany a communication will be satisfied if such communication is an electronic communication containing an active hyperlink to such prospectus.

(g) This section does not apply to a communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)).

[70 FR 44800, Aug. 3, 2005, as amended at 76 FR 46617, Aug. 3, 2011]

230.135a Generic Advertising

(a) For the purposes only of section 5 of the Act, a notice, circular, advertisement, letter, sign, or other communication, published or transmitted to any person which does not specifically refer by name to the securities of a particular investment company, to the investment company itself, or to any other securities not exempt under section 3(a) of the Act, will not be deemed to offer any security for sale, provided:

(1) Such communication is limited to any one or more of the following:

(i) Explanatory information relating to securities of investment companies generally or to the nature of investment companies, or to services offered in connection with the ownership of such securities,

(ii) The mention or explanation of investment companies of different generic types or having various investment objectives, such as balanced funds, growth funds, income funds, leveraged funds, specialty funds, variable annuities, bond funds, and no-load funds,

(iii) Offers, descriptions, and explanation of various products and services not constituting a security subject to registration under the Act: Provided, That such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a security issued by a registered investment company,

Invitation to inquire for further information, and

(2) Such communication contains the name and address of a registered broker or dealer or other person sponsoring the communication.

(b) If such communication contains a solicitation of inquiries and prospectuses for investment company securities are to be sent or delivered in response to such inquiries, the number of such investment companies and, if applicable, the fact that the sponsor of the communication is the principal underwriter or investment adviser in respect to such investment companies shall be stated.

(c) With respect to any communication describing any type of security, service, or product, the broker, dealer, or other person sponsoring such communication must offer for sale a security, service, or product of the type described in such communication.

[37 FR 10073, May 19, 1972, as amended at 37 FR 10931, June 1, 1972]

230.156 INVESTMENT COMPANY SALES LITERATURE

(a) Under the federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule 10b–5 thereunder (17 CFR part 240), it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of securities issued by an investment company. Under these provisions, sales literature is materially misleading if it: (1) Contains an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

(1) A statement could be misleading because of:

(i) Other statements being made in connection with the offer of sale or sale of the securities in question;

(ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; or

(iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where:

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and

(i) Representations, whether express or implied, about future investment performance, including:

(A) Representations, as to security of capital, possible future gains or income, or expenses associated with an investment;

(B) Representations implying that future gain or income may be inferred from or predicted based on past investment performance; or

(C) Portrayals of past performance, made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a material fact about the characteristics or attributes of an investment company could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or an investment in securities issued by such company, services, security of investment or funds, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other investment vehicles or to indexes.

(c) For purposes of this section, the term *sales literature* shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company. Communications between issuers, underwriters and dealers are included in this definition of *sales literature* if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

[44 FR 64072, Nov. 6, 1979, as amended at 68 FR 57777, Oct. 6, 2003]

230.433 Conditions to Permissible Post-Filing Free Writing Prospectuses

(a) Scope of section. This section applies to any free writing prospectus with respect to securities of any issuer (except as set forth in Rule 164 (§230.164)) that are the subject of a registration statement that has been filed under the Act. Such a free writing prospectus that satisfies the conditions of this section may include information the substance of which is not included in the registration statement. Such a free writing prospectus that satisfies the conditions of this section will be a prospectus permitted under section 10(b) of the Act for purposes of sections 2(a)(10), 5(b)(1), and 5(b)(2) of the Act and will, for purposes of considering it a prospectus, be deemed to be public, without regard to its method of use or distribution, because it is related to the public offering of securities that are the subject of a filed registration statement.

(b) Permitted use of free writing prospectus. Subject to the conditions of this paragraph (b) and satisfaction of the conditions set forth in paragraphs (c) through (g) of this section, a free writing prospectus may be used under this section and Rule 164 in connection with a registered offering of securities:

(1) Eligibility and prospectus conditions for seasoned issuers and well-known seasoned issuers. Subject to the provisions of Rule 164(e), (f), and (g), the issuer or any other offering participant may use a free writing prospectus in the following offerings after a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act:

(i) Offerings of securities registered on Form S–3 (§239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF-3 (§239.45 of this chapter);

(ii) Offerings of securities registered on Form F–3 (§239.13 of this chapter) pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(iii) Any other offering not excluded from reliance on this section and Rule 164 of securities of a well-known seasoned issuer; and

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms.

(2) Eligibility and prospectus conditions for non-reporting and unseasoned issuers. If the issuer does not fall within the provisions of paragraph (b)(1) of this section, then, subject to the provisions of Rule 164(e), (f), and (g), any person participating in the offer or sale of the securities may use a free writing prospectus as follows:

(i) If the free writing prospectus is or was prepared by or on behalf of or used or referred to by an issuer or any other offering participant, if consideration has been or will be given by the issuer or other offering participant for the dissemination (in any format) of any free writing prospectus (including any published article, publication, or advertisement), or if section 17(b) of the Act requires disclosure that consideration has been or will be given by the issuer or other offering participant for any activity described therein in connection with the free writing prospectus, then a registration statement relating to the offering must have been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act, including a price range where required by rule, and the free writing prospectus shall be accompanied or preceded by the most recent such prospectus; *provided*, *however*, that use of the free writing prospectus is not conditioned on providing the most recent such prospectus if a prior such prospectus has been provided and there is no material change from the prior prospectus reflected in the most recent prospectus; *provided further*, that after effectiveness and availability of a final prospectus meeting the requirements of section 10(a) of the Act, no such earlier prospectus may be provided in satisfaction of this condition, and such final prospectus must precede or accompany any free writing prospectus provided after such availability, whether or not an earlier prospectus had been previously provided.

NOTES TO PARAGRAPH (b)(2)(i) of Rule 433.

1. The condition that a free writing prospectus shall be accompanied or preceded by the most recent prospectus satisfying the requirements of section 10 of the Act would be satisfied if a free writing prospectus that is an electronic communication contained an active hyperlink to such most recent prospectus; and

2. A communication for which disclosure would be required under section 17(b) of the Act as a result of consideration given or to be given, directly or indirectly, by or on behalf of an issuer or other offering participant is an offer by the issuer or such other offering participant as the case may be and is, if written, a free writing prospectus of the issuer or other offering participant.

(ii) Where paragraph (b)(2)(i) of this section does not apply, a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431 satisfies the requirements of section 10 of the Act, including a price range where required by rule. For purposes of paragraph (f) of this section, the prospectus included in the registration statement relating to the offering that has been filed does not have to include a price range otherwise required by rule.

(3) Successors. A successor issuer will be considered to satisfy the applicable provisions of this paragraph (b) if:

(i) Its predecessor and it, taken together, satisfy the conditions, provided that the succession was primarily for the purpose of changing the state or other jurisdiction of incorporation of the predecessor or forming a holding company and the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(ii)All predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(c) Information in a free writing prospectus.

(1) A free writing prospectus used in reliance on this section may include information the substance of which is not included in the registration statement but such information shall not conflict with:

(i) Information contained in the filed registration statement, including any prospectus or prospectus supplement that is part of the registration statement (including pursuant to Rule 430B (§230.430B), Rule 430C (§230.430C), or Rule 430D (§230.430D)) or and not superseded or modified; or

(ii) Information contained in the issuer's periodic and current reports filed or furnished to the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference into the registration statement and not superseded or modified.

(2) (i) A free writing prospectus used in reliance on this section shall contain substantially the following legend:

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at *www.sec.gov*. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1–8[xx-xxx-xxxx].

(ii) The legend also may provide an e-mail address at which the documents can be requested and may indicate that the documents also are available by accessing the issuer's Web site and provide the Internet address and the particular location of the documents on the Web site.

(d) Filing conditions.

(1) Except as provided in paragraphs (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), and (f) of this section, the following shall be filed with the Commission under this section by a means reasonably calculated to result in filing no later than the date of first use. The free writing prospectus filed for purposes of this section will not be filed as part of the registration statement:

(i) The issuer shall file:

(A) Any issuer free writing prospectus, as defined in paragraph (h) of this section;

(B) Any issuer information that is contained in a free writing prospectus prepared by or on behalf of or used by any other offering participant (but not information prepared by or on behalf of a person other than the issuer on the basis of or derived from that issuer information); and

(C) A description of the final terms of the issuer's securities in the offering or of the offering contained in a free writing prospectus or portion thereof prepared by or on behalf of the issuer or any offering participant, after such terms have been established for all classes in the offering; and

(ii) Any offering participant, other than the issuer, shall file any free writing prospectus that is used or referred to by such offering participant and distributed by or on behalf of such person in a manner reasonably designed to lead to its broad unrestricted dissemination.

(2) Each free writing prospectus or issuer information contained in a free writing prospectus filed under this section shall identify in the filing the Commission file number for the related registration statement or, if that file number is unknown, a description sufficient to identify the related registration statement.

(3) The condition to file a free writing prospectus under paragraph (d)(1) of this section shall not apply if the free writing prospectus does not contain substantive changes from or additions to a free writing prospectus previously filed with the Commission.

(4) The condition to file issuer information contained in a free writing prospectus of an offering participant other than the issuer shall not apply if such information is included (including through incorporation by reference) in a prospectus or free writing prospectus previously filed that relates to the offering.

(5) Notwithstanding the provisions of paragraph (d)(1) of this section:

(i) To the extent a free writing prospectus or portion thereof otherwise required to be filed contains a description of terms of the issuer's securities in the offering or of the offering that does not reflect the final terms, such free writing prospectus or portion thereof is not required to be filed; and

(ii) A free writing prospectus or portion thereof that contains only a description of the final terms of the issuer's securities in the offering or of the offerings shall be filed by the issuer within two days of the later of the date such final terms have been established for all classes of the offering and the date of first use.

(6) (i) Notwithstanding the provisions of paragraph (d) of this section, in an offering of asset-backed securities, a free writing prospectus or portion thereof required to be filed that contains only ABS informational and computational materials as defined in Item 1101(a) of Regulation AB (§229.1101 of this chapter), may be filed under this section within the timeframe permitted by Rule 426(b) (§230.426(b)) and such filing will satisfy the filing conditions under this section.

(ii) In the event that a free writing prospectus is used in reliance on this section and Rule 164 and the conditions of this section and Rule 164 (which may include the conditions of paragraph (d)(6)(i) of this section) are satisfied with respect thereto, then the use of that free writing prospectus shall not be conditioned on satisfaction of the provisions, including without limitation the filing conditions,

of Rule 167 and Rule 426 (§§230.167 and 230.426). In the event that ABS informational and computational materials are used in reliance on Rule 167 and Rule 426 and the conditions of those rules are satisfied with respect thereto, then the use of those materials shall not be conditioned on the satisfaction of the conditions of Rule 164 and this section.

(7) The condition to file a free writing prospectus or issuer information pursuant to this paragraph (d) for a free writing prospectus used at the same time as a communication in a business combination transaction subject to Rule 425 (§230.425) shall be satisfied if:

(i) The free writing prospectus or issuer information is filed in accordance with the provisions of Rule 425, including the filing timeframe of Rule 425;

(ii)The filed material pursuant to Rule 425 indicates on the cover page that it also is being filed pursuant to Rule 433; and

(iii)The filed material pursuant to Rule 425 contains the information specified in paragraph (c)(2) of this section.

(8) Notwithstanding any other provision of this paragraph (d):

(i) A road show for an offering that is a written communication is a free writing prospectus, provided that, except as provided in paragraph (d)(8)(ii) of this section, a written communication that is a road show shall not be required to be filed; and

(ii)In the case of a road show that is a written communication for an offering of common equity or convertible equity securities by an issuer that is, at the time of the filing of the registration statement for the offering, not required to file reports with the Commission pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, such a road show is required to be filed pursuant to this section unless the issuer of the securities makes at least one version of a bona fide electronic road show available without restriction by means of graphic communication to any person, including any potential investor in the securities (and if there is more than one version of a road show for the offering that is a written communication, the version available without restriction is made available no later than the other versions).

NOTE TO PARAGRAPH (d)(8): A communication that is provided or transmitted simultaneously with a road show and is provided or transmitted in a manner designed to make the communication available only as part of the road show and not separately is deemed to be part of the road show. Therefore, if the road show is not a written communication, such a simultaneous communication (even if it would otherwise be a graphic communication or other written communication) is also deemed not to be written. If the road show is written and not required to be filed, such a simultaneous communication is also not required to be filed. Otherwise, a written communication that is an offer contained in a separate file from a road show, whether or not the road show is a written communication, or otherwise transmitted separately from a road show, will be a free writing prospectus subject to any applicable filing conditions of paragraph (d) of this section.

(e) Treatment of information on, or hyperlinked from, an issuer's Web site.

(1) An offer of an issuer's securities that is contained on an issuer's Web site or hyperlinked by the issuer from the issuer's Web site to a third party's Web site is a written offer of such securities by the issuer and, unless otherwise exempt or excluded from the requirements of section 5(b)(1) of the Act, the filing conditions of paragraph (d) of this section apply to such offer.

(2) Notwithstanding paragraph (e)(1) of this section, historical issuer information that is identified as such and located in a separate section of the issuer's Web site containing historical issuer information, that has not been incorporated by reference into or otherwise included in a prospectus of the issuer for the offering and that has not otherwise been used or referred to in connection with the offering, will not be considered a current offer of the issuer's securities and therefore will not be a free writing prospectus.

(f) Free writing prospectuses published or distributed by media. Any written offer for which an issuer or any other offering participant or any person acting on its behalf provided, authorized, or approved information that is prepared and published or disseminated by a person unaffiliated with the issuer or any other offering participant that is in the business of publishing, radio or television broadcasting or otherwise disseminating written communications would be considered at the time of publication or dissemination to be a free writing prospectus prepared by or on behalf of the issuer or such other offering participant for purposes of this section subject to the following:

(1) The conditions of paragraph (b)(2)(i) of this section will not apply and the conditions of paragraphs (c)(2) and (d) of this section will be deemed to be satisfied if:

(i) No payment is made or consideration given by or on behalf of the issuer or other offering participant for the written communication or its dissemination; and

(ii)The issuer or other offering participant in question files the written communication with the Commission, and includes in the filing the legend required by paragraph (c)(2) of this section, within four business days after the issuer or other offering participant becomes aware of the publication, radio or television broadcast, or other dissemination of the written communication.

(2) The filing obligation under paragraph (f)(1)(ii) of this section shall be subject to the following:

(i) The issuer or other offering participant shall not be required to file a free writing prospectus if the substance of that free writing prospectus has previously been filed with the Commission;

(ii) Any filing made pursuant to paragraph (f)(1)(ii) of this section may include information that the issuer or offering participant in question reasonably believes is necessary or appropriate to correct information included in the communication; and

(ii) In lieu of filing the actual written communication as published or disseminated as required by paragraph (f)(1)(ii) of this section, the issuer or offering participant in question may file a copy of the materials provided to the media, including transcripts of interviews or similar materials, provided the copy or transcripts contain all the information provided to the media.

(3) For purposes of this paragraph (f) of this section, an issuer that is in the business of publishing or radio or television broadcasting may rely on this paragraph (f) as to any publication or radio or television broadcast that is a free writing prospectus in respect of an offering of securities of the issuer if the issuer or an affiliate:

(i) Is the publisher of a *bona fide* newspaper, magazine, or business or financial publication of general and regular circulation or *bona fide* broadcaster of news including business and financial news;

(ii) Has established policies and procedures for the independence of the content of the publications or broadcasts from the offering activities of the issuer; and

(iii) Publishes or broadcasts the communication in the ordinary course.

(g) Record retention. Issuers and offering participants shall retain all free writing prospectuses they have used, and that have not been filed pursuant to paragraph (d) or (f) of this section, for 3 years following the initial *bona fide* offering of the securities in question.

NOTE TO PARAGRAPH (g) of §230.433. To the extent that the record retention requirements of Rule 17a–4 of the Securities Exchange Act of 1934 (§240.17a–4 of this chapter) apply to free writing prospectuses required to be retained by a broker-dealer under this section, such free writing prospectuses are required to be retained in accordance with such requirements.

(h) Definitions. For purposes of this section:

(1) An *issuer free writing prospectus* means a free writing prospectus prepared by or on behalf of the issuer or used or referred to by the issuer and, in the case of an asset-backed issuer, prepared by or on behalf of a depositor, sponsor, or servicer (as defined in Item 1101 of Regulation AB) or affiliated depositor or used or referred to by any such person.

(2) Issuer information means material information about the issuer or its securities that has been provided by or on behalf of the issuer.

(3) A written communication or information is prepared or provided by or on behalf of a person if the person or an agent or representative of the person authorizes the communication or information or approves the communication or information before it is used. An offering participant other than the issuer shall not be an agent or representative of the issuer solely by virtue of its acting as an offering participant.

(4) A *road show* means an offer (other than a statutory prospectus or a portion of a statutory prospectus filed as part of a registration statement) that contains a presentation regarding an offering by one or more members of the issuer's management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and includes discussion of one or more of the issuer, such management, and the securities being offered; and

(5) A *bona fide electronic road show* means a road show that is a written communication transmitted by graphic means that contains a presentation by one or more officers of an issuer or other persons in an issuer's management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and, if more than one road show that is a written communication is being used, includes discussion of the same general areas of information regarding the issuer, such management, and the securities being offered as such other issuer road show or shows for the same offering that are written communications.

NOTE to §230.433. This section does not affect the operation of the provisions of clause (a) of section 2(a) (10) of the Act providing an exception from the definition of "prospectus."

[70 FR 44815, Aug. 3, 2005, as amended at 71 FR 7413, Feb. 13, 2006; 79 FR 57331, Sept. 24, 2014]

230.482 ADVERTISING BY AN INVESTMENT COMPANY AS SATISFYING REQUIREMENTS OF SECTION 10

(a) Scope of rule. This section applies to an advertisement or other sales material (*advertisement*) with respect to securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (*1940 Act*), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) or §230.498(d) or to a summary prospectus under §230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

NOTE TO PARAGRAPH (A): The fact that an advertisement complies with this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the advertisement under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company advertisements are misleading, *see* §230.156. In addition, an advertisement that complies with this section is subject to the legibility requirements of §230.420.

(b) Required disclosure. This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) Availability of additional information. An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identifies a source from which an investor may obtain a prospectus and, if available, a summary prospectus; and states that the prospectus and, if available, the summary prospectus should be read carefully before investing.

(2) Advertisements used prior to effectiveness of registration statement. An advertisement that is used prior to effectiveness of the investment company's registration statement or the determination of the public offering price (in the case of a registration statement that becomes effective omitting information from the prospectus contained in the registration statement in reliance upon §230.430A) must include the "Subject to Completion" legend required by §230.481(b)(2).

(3) Advertisements including performance data. An advertisement that includes performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts (*trust account*) must include the following

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify either a toll-free (or collect) telephone number or a Web site where an investor may obtain performance data current to the most recent month-end unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. An advertisement for a money market fund that is a government money market fund, as defined in §270.2a-7(a)(16) of this chapter, or a retail money market fund, as defined in §270.2a-7(a)(25) of this chapter may omit the disclosure about principal value fluctuation; and

NOTE TO PARAGRAPH (B)(3)(I): The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(4) Money market funds.

(i) An advertisement for an investment company that holds itself out to be a money market fund, that is not a government money market fund, as defined in §270.2a-7(a)(16) of this chapter, or a retail money market fund, as defined in §270.2a-7(a)(25) of this chapter, must include the following statement:

> You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in §270.2a-7(a)(16) of this chapter or a retail money market fund, as defined in §270.2a-7(a)(25) of this chapter, and that is subject to the requirements of §270.2a-7(c)(2)(i) and/or (ii) of this chapter (or is not subject to the requirements of §270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to §270.2a-7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §270.2a-7(c)(2)(i) and/or (ii)), must include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(iii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in §270.2a-7(a)(16) of this chapter, that is not subject to the requirements of §270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to §270.2a-7(c)(2)(iii) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §270.2a-7(c)(2)(i) and/or (ii)), must include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

NOTE TO PARAGRAPH(B)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, the statement may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.") for the term of the agreement. For purposes of this Note, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on §270.17a-9 of this chapter, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

(5) Presentation. In a print advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by paragraph (b)(3) of this section may appear in a type size no smaller than that of the performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by paragraph (b)(1) through (b)(4) of this section relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by paragraph (b)(1) through (b)(4) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(3) of this section must be presented in close proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote.

(6) Commission legend. An advertisement that complies with this section need not contain the Commission legend required by §230.481(b)(1).

(c) Use of applications. An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that a prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes, or is accompanied by, information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)).

(d) Performance data for non-money market funds. In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (e) of this section), any quotation of the company's performance contained in an advertisement shall be limited to quotations of:

(1) Current yield. A current yield that:

(i) Is based on the methods of computation prescribed in Form N-1A(§§239.15A and 274.11A of this chapter), N-3 (§§239.17a and 274.11b of this chapter), or N-4 (§§239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) Tax-equivalent yield. A tax-equivalent yield that:

(i) Is based on the methods of computation prescribed in Form N-1A (§§239.15A and 274.11A of this chapter), N-3 (§§239.17a and 274.11b of this chapter), or N-4 (§§239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of yield as provided for in paragraph (d)(1) of this section and total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of yield and total return;

(iv) Relates to the same base period as the required quotation of yield; and

(v) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(3) Average annual total return. Average annual total return for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N-1A (§§239.15A and 274.11A of this chapter), N-3 (§§239.17a and 274.11b of this chapter), or N-4 (§§239.17b and 274.11c of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be set out with equal prominence; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identify the length of and the last day of the one, five, and ten year periods.

(4) After-tax return. For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq*.) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N-1A (§§239.15A and 274.11A of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Be set out with equal prominence and be set out in no greater prominence than the required quotations of total return; and

(vi) Adjacent to the quotations and with no less prominence than the quotations, identify the length of and the last day of the one, five, and ten year periods.

(5) **Other performance measures**. Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (d)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Adjacent to the measurement and with no less prominence than the measurement, identifies the length of and the last day of the period for which performance is measured.

(e) Performance data for money market funds. In the case of a money market fund:

(1) Yield. Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N-1A (§§239.15A and 274.11A of this chapter), N-3 (§§239.17a and 274.11b of this chapter), or N-4 (§§239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that, adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing that quotation;

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence; or

(iii) A quotation or quotations of tax-equivalent yield or tax-equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base

period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

(2) Total return. Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (e)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(f) Advertisements that make tax representations. An advertisement for an open-end management investment company (other than a company that is permitted under §270.35d-1(a)(4) of this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance must accompany any quotation of the company's performance permitted by paragraph (d) of this section with quotations of total return as provided for in paragraph (d)(4) of this section.

(g) Timeliness of performance data. All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1)(i) The total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; and

(ii) Total return quotations current to the most recent month ended seven business days prior to the date of use are provided at the toll-free (or collect) telephone number or Web site identified pursuant to paragraph (b)(3)(i) of this section; or

(2) The total return quotations are current to the most recent month ended seven business days prior to the date of use of the advertisement.

NOTE TO PARAGRAPH (G): The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(h) Filing. An advertisement that complies with this section need not be filed as part of the registration statement filed under the Act.

NOTE TO PARAGRAPH (H): These advertisements, unless filed with NASD Regulation, Inc., are required to be filed in accordance with the requirements of §230.497.

[68 FR 57777, Oct. 6, 2003, as amended at 74 FR 4584, Jan. 26, 2009; 79 FR 47957, Aug. 14, 2014]

Investment Company Act of 1940

270.34b-1 Sales Literature Deemed to be Misleading

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a-24(b)] ("sales literature") shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section.

NOTE to Introductory text of §270.34B-1: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, see §230.156 of this chapter.

(a) Sales literature for a money market fund shall contain the information required by paragraph (b)(4) of Sec. 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of Sec. 230.482 of this chapter.

(b)

(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (b)(3) of Sec. 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of §230.482 of this chapter.

(ii) In any sales literature for a money market fund:

(A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund with a quotation of current yield specified by paragraph (e)(1)(i) of Sec. 230.482 of this chapter;

(B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in §230.482(d)(1)(iii) of this chapter; and

(C) Accompany any quotation of the money market fund's total return with a quotation of the money market fund's current yield specified in paragraph (e)(1) (i) of Sec. 230.482 of this chapter. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(iii) In any sales literature for an investment company other than a money market fund that contains performance data:

(A) Include the total return information required by paragraph (d)(3) of Sec. 230.482 of this chapter;

(B) Accompany any quotation of performance adjusted to reflect the effect of taxes (not including a quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company) with the quotations of total return specified by paragraph (d)(4) of Sec. 230.482 of this chapter;

(C) If the sales literature (other than sales literature for a company that is permitted under Sec. 270.35d-1(a)(4) to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) represents or implies that the company is managed to limit or control the effect of taxes on company performance, include the quotations of total return specified by paragraph (d)(4) of §230.482 of this chapter;

(D) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company with a quotation of current yield specified by paragraph (d)(1) of §230.482 of this chapter; and

(E) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company with a quotation of tax equivalent yield specified in paragraph (d) (2) and current yield specified by paragraph (d)(1) of §230.482 of this chapter.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (g) of §230.482 of this chapter.

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a-29) containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (d)(3)(ii), (d)(4)(ii), and (g) of Sec. 230.482 of this chapter apply to any such periodic report containing any other performance data.

NOTE: Sales literature (except that of a money market fund) containing a quotation of yield or tax equivalent yield must also contain the total return information. In the case of sales literature, the currentness provisions apply from the date of distribution and not the date of submission for publication.

[58 FR 19055, Apr. 12, 1993; 58 FR 21927, Apr. 26, 1993, as amended at 62 FR 64986, Dec. 9, 1997; 63 FR 13987, Mar. 23, 1998; 66 FR 9018, Feb. 5, 2001; 68 FR 57779, Oct. 6, 2003]

MSRB RULE G-21 ADVERTISING

(a) General Provisions.

(i) Definition of "Advertisement." For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to customers or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by brokers, dealers or municipal securities dealers.

(ii) Definition of "Form Letter." For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to 25 or more persons within any period of 90 consecutive days.

(iii) General Standard for Advertisements. Subject to the further requirements of this rule relating to professional advertisements and product advertisements, no broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities that such broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading.

(b) Professional Advertisements.

(i) Definition of "Professional Advertisement." The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect to municipal securities of such broker, dealer or municipal securities dealer or of another broker, dealer, or municipal securities dealer.

(ii) Standard for Professional Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that is materially false or misleading.

(c) Product Advertisements.

(i) Definition of "Product Advertisement." The term "product advertisement" means any advertisement concerning one or more specific municipal securities, one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.

(ii) Standard for Product Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that such broker, dealer, or municipal securities dealer knows or has reason to know is materially false or misleading and, to the extent applicable, that is not in compliance with section (d) or (e) hereof.

(d) New Issue Product Advertisements. In addition to the requirements of section (c), all product advertisements for new issue municipal securities (other than municipal fund securities) shall be subject to the following requirements:

(i) Accuracy at Time of Sale. A syndicate or syndicate member which publishes or causes to be published any advertisement regarding the offering by the syndicate of a new issue of municipal securities, or any part thereof, may show the initial reoffering prices or yields for the securities, even if the price or yield for a maturity or maturities may have changed, provided that the advertisement contains the date of sale of the securities by the issuer to the syndicate. In the event that the prices or yields shown in a new issue advertisement are other than the initial reoffering prices or yields, such an advertisement must show the prices or yields of the securities as of the time the advertisement is submitted for publication. For purposes of this rule, the date of sale shall be deemed to be, in the case of competitive sales, the date on which bids are required to be submitted to an issuer and, in the case of negotiated sales, the date on which a contract to purchase securities from an issuer is executed.

(ii) Accuracy at Time of Publication. Each advertisement relating to a new issue of municipal securities shall also indicate, if applicable, that the securities shown as available from the syndicate may no longer be available from the syndicate at the time of publication or may be available from the syndicate at a price or yield different from that shown in the advertisement.

(e) Municipal Fund Security Product Advertisements. In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) **Required Disclosures.**

(A) Substance and Format of Disclosure. Except as described in paragraph (B) of this subsection (i), each product advertisement for municipal fund securities:

(1) basic disclosure – must include a statement to the effect that:

(a) an investor should consider the investment objectives, risks, and charges and expenses associated with municipal fund securities before investing;

(b) more information about municipal fund securities is available in the issuer's official statement;

(c) if the advertisement identifies a source from which an investor may obtain an official statement and the broker, dealer or municipal securities dealer that publishes the advertisement is the underwriter for one or more of the issues of municipal fund securities for which any such official statement may be supplied, such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities; and

(d) the official statement should be read carefully before investing.

(2) additional disclosures for identified products – that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) unless the offer of such municipal fund securities is exempt from Exchange Act Rule 15c2-12 and the issuer thereof has not produced an official statement, a source from which an investor may obtain an official statement;

(b) if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that an investor should consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other benefits that are only available for investments in such state's qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, or made available by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) if the advertisement is for a municipal fund security that the issuer holds out as having the characteristics of a money market fund, statements to the effect that an investment in the security is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and, if the security is held out as maintaining a stable net asset value, that although the issuer seeks to

preserve the value of the investment at $1.00 per share or such other applicable fixed share price, it is possible to lose money by investing in the security.

(3) additional disclosures concerning performance – that includes performance data must include:

(a) a legend disclosing that the performance data included in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or a website where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available;

(b) if a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee (current as of the date such advertisement is submitted for publication or otherwise disseminated) and, if the sales load or fee is not reflected in the performance data included in the advertisement, a statement that the performance data does not reflect the deduction of the sales load or fee and that the performance data would be lower if such load or fee were included; and

(c) to the extent that such performance data relates to municipal fund securities that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund securities (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements.

(4) format of disclosure – must meet the following requirements:

(a) **for a print advertisement:**

(i) the statements required by subparagraphs (1), (2) and (3) of this paragraph (A) must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by subparagraph (3) of this paragraph may appear in a type size no smaller than that of the performance data;

(ii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data; provided that such statements must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote; and

(iii) the maximum amount of the sales load required to be disclosed pursuant to clause (3)(b) and the information required to be disclosed pursuant to clause (3)(c), along with the standardized performance information mandated by Securities

Act Rule 482 as applicable by virtue of subsection (e)(ii) of this rule, must be presented in a prominent text box that contains only such information but which may also contain comparative performance and fee data and disclosures required under this section (e).

(b) **for an advertisement delivered through an electronic medium:**

(i) the legibility requirements for the statements required by subparagraphs (1), (2) and (3) of this paragraph relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them;

(ii) if such advertisement is a radio or television advertisement, the statements required by subparagraphs (1), (2) and (3) of this paragraph must be given emphasis equal to that used in the major portion of the advertisement; and

(iii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data.

(B) Exceptions from Certain Disclosure Requirements. Notwithstanding any other provision of this rule, the following advertisements relating to municipal fund securities shall not be subject to the provisions of subparagraphs (1) and (2) of paragraph (e)(i)(A):

(1) generic advertisements – any advertisement that does not refer by name to any specific investment option or portfolio offered by an issuer of municipal fund securities, but includes the name and address of the broker, dealer or municipal securities dealer or other person sponsoring the advertisement, and that is limited to any one or more of the following:

(a) explanatory information relating to municipal fund securities generally or the nature of the issuers thereof or of the programs through which they are issued, or to services offered in connection with the ownership of such securities; or

(b) the mention or explanation of municipal fund securities of different generic types or having various investment objectives; or

(c) offers, descriptions, and explanations of various products and services not constituting a municipal fund security, provided that such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a municipal fund security; or

(d) invitation to inquire for further information; provided that if an official statement for municipal fund securities is to be sent or delivered in response to such inquiries and if the sponsor of the advertisement is the underwriter for one or more of the issues of municipal fund securities for which such official statement may be supplied, the advertisement must state that such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities.

(2) certain blind advertisements – any advertisement that does not identify a broker, dealer or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer and that is limited to any one or more of the following:

(a) the name of an issuer of municipal fund securities; or

(b) contact information for an issuer of municipal fund securities or for any agent of such issuer to obtain an official statement or other information; provided that, if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source unless initiated by the customer; or

(c) a logo or other graphic design of an issuer of municipal fund securities that does not directly or indirectly identify the broker, dealer or municipal securities dealer or any affiliate of the broker, dealer or municipal securities dealer; or

(d) a service mark, trademark or short slogan of the issuer's general objectives that does not constitute a call to invest in municipal fund securities.

(3) certain form letters to existing customers – any form letter relating to municipal fund securities distributed solely to existing customers of the broker, dealer or municipal securities dealer to whom the broker, dealer or municipal securities dealer has previously sent or caused to be sent an official statement for:

(a) any municipal fund securities of the issuer of such municipal fund securities; or

(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(ii) **Performance Data.** Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) source of data – to the extent that information necessary to calculate performance data or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c) is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) period of calculation – if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) currentness of calculation – performance data and total annual operating expense ratio shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii); and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii)) are provided at the toll-free (or collect) telephone number or website identified pursuant to clause (i)(A)(3)(a) of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available

to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) 12b-1-type plans – where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940.

(E) tax-adjusted calculations – in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner.

(F) applicability with respect to underlying assets – notwithstanding any of the foregoing, this subsection (e)(ii) shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) **Nature of Issuer and Security.** An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.,* A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) **Capacity of Dealer and Other Parties.** An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would affect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.

(v) **Tax Consequences and Other Features.** Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes generalized statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must include a generalized statement that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly list the substantive factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(vi) **Underlying Registered Securities.** If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or NASD advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection does not limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) **Correspondence Presenting Performance Data.** Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) Approval by Principal. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use. Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all such advertisements.

MSRB RULE G-21 ADVERTISING

(a) General Provisions.

(i) Definition of "Advertisement." For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to customers or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by brokers, dealers or municipal securities dealers.

(ii) Definition of "Form Letter." For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to 25 or more persons within any period of 90 consecutive days.

(iii) General Standard for Advertisements. Subject to the further requirements of this rule relating to professional advertisements and product advertisements, no broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities that such broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading.

(b) Professional Advertisements.

(i) Definition of "Professional Advertisement." The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect to municipal securities of such broker, dealer or municipal securities dealer or of another broker, dealer, or municipal securities dealer.

(ii) Standard for Professional Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that is materially false or misleading.

(c) Product Advertisements.

(i) Definition of "Product Advertisement." The term "product advertisement" means any advertisement concerning one or more specific municipal securities, one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.

(ii) Standard for Product Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that such broker, dealer, or municipal securities dealer knows or has reason to know is materially false or misleading and, to the extent applicable, that is not in compliance with section (d) or (e) hereof.

(d) New Issue Product Advertisements. In addition to the requirements of section (c), all product advertisements for new issue municipal securities (other than municipal fund securities) shall be subject to the following requirements:

(i) Accuracy at Time of Sale. A syndicate or syndicate member which publishes or causes to be published any advertisement regarding the offering by the syndicate of a new issue of municipal securities, or any part thereof, may show the initial reoffering prices or yields for the securities, even if the price or yield for a maturity or maturities may have changed, provided that the advertisement contains the date of sale of the securities by the issuer to the syndicate. In the event that the prices or yields shown in a new issue advertisement are other than the initial reoffering prices or yields, such an advertisement must show the prices or yields of the securities as of the time the advertisement is submitted for publication. For purposes of this rule, the date of sale shall be deemed to be, in the case of competitive sales, the date on which bids are required to be submitted to an issuer and, in the case of negotiated sales, the date on which a contract to purchase securities from an issuer is executed.

(ii) Accuracy at Time of Publication. Each advertisement relating to a new issue of municipal securities shall also indicate, if applicable, that the securities shown as available from the syndicate may no longer be available from the syndicate at the time of publication or may be available from the syndicate at a price or yield different from that shown in the advertisement.

(e) Municipal Fund Security Product Advertisements. In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) **Required Disclosures.**

(A) Substance and Format of Disclosure. Except as described in paragraph (B) of this subsection (i), each product advertisement for municipal fund securities:

(1) basic disclosure – must include a statement to the effect that:

(a) an investor should consider the investment objectives, risks, and charges and expenses associated with municipal fund securities before investing;

(b) more information about municipal fund securities is available in the issuer's official statement;

(c) if the advertisement identifies a source from which an investor may obtain an official statement and the broker, dealer or municipal securities dealer that publishes the advertisement is the underwriter for one or more of the issues of municipal fund securities for which any such official statement may be supplied, such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities; and

(d) the official statement should be read carefully before investing.

(2) additional disclosures for identified products – that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) unless the offer of such municipal fund securities is exempt from Exchange Act Rule 15c2-12 and the issuer thereof has not produced an official statement, a source from which an investor may obtain an official statement;

(b) if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that an investor should consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other state benefits such as financial aid, scholarship funds, and protection from creditors that are only available for investments in such state's qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, or made available by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) if the advertisement is for a municipal fund security that has an investment option that invests solely in a money market fund:

(i) and that money market fund is not a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, statements to the effect that:

> You could lose money by investing in this investment option. Because the share price of the money market fund in which your investment option invests (the "underlying fund") will fluctuate, when you redeem your units in that investment option, those units may be worth more or less than what you originally paid for them. The underlying fund may impose a fee upon sale of those shares or may temporarily suspend the ability of the investment option to redeem shares if the underlying fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(ii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, and that is subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940 (or is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940), statements to the effect that:

> You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the "underlying fund") seeks to preserve the value of its shares at $1.00 per share, the underlying fund cannot guarantee it will do so. The underlying fund may impose a fee upon the investment option's redemption of the underlying fund's shares or the underlying fund may temporarily suspend the investment option's ability to redeem its shares if the underlying fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(iii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940, that is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, a statement to the effect that:

> You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the "underlying fund") seeks to preserve its value at $1.00 per share, the underlying fund cannot guarantee it will do so. An investment in this investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(3) additional disclosures concerning performance – that includes performance data must include:

(a) a legend disclosing that the performance data included in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's units, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or website (that may be hyperlinked) where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available, however an investment option that invests in a money market fund that is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940 may omit the disclosure about principal value fluctuation;

(b) if a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee (current as of the date such advertisement is submitted for publication or otherwise disseminated) and, if the sales load or fee is not reflected in the performance data included in the advertisement, a statement that the performance data does not reflect the deduction of the sales load or fee and that the performance data would be lower if such load or fee were included; and

(c) to the extent that such performance data relates to municipal fund security investment options that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating

expense ratio of such municipal fund security investment options (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements.

(4) format of disclosure – must meet the following requirements:

(a) **for a print advertisement:**

(i) the statements required by subparagraphs (1), (2) and (3) of this paragraph (A) must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by subparagraph (3) of this paragraph may appear in a type size no smaller than that of the performance data;

(ii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data; provided that such statements must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote; and

(iii) the maximum amount of the sales load required to be disclosed pursuant to clause (3)(b) and the information required to be disclosed pursuant to clause (3)(c), along with the standardized performance information mandated by Securities Act Rule 482 as applicable by virtue of subsection (e)(ii) of this rule, must be presented in a prominent text box that contains only such information but which may also contain comparative performance and fee data and disclosures required under this section (e).

(b) **for an advertisement delivered through an electronic medium:**

(i) the legibility requirements for the statements required by subparagraphs (1), (2) and (3) of this paragraph relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them;

(ii) if such advertisement is a radio or television advertisement, the statements required by subparagraphs (1), (2) and (3) of this paragraph must be given emphasis equal to that used in the major portion of the advertisement; and

(iii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data.

(B) Exceptions from Certain Disclosure Requirements. Notwithstanding any other provision of this rule, the following advertisements relating to municipal fund securities shall not be subject to the provisions of subparagraphs (1) and (2) of paragraph (e)(i)(A):

(1) generic advertisements – any advertisement that does not refer by name to any specific investment option or portfolio offered by an issuer of municipal fund securities, but includes the name and address of the broker, dealer or municipal securities dealer or other person sponsoring the advertisement, and that is limited to any one or more of the following:

(a) explanatory information relating to municipal fund securities generally or the nature of the issuers thereof or of the programs through which they are

issued, or to services offered in connection with the ownership of such securities; or

(b) the mention or explanation of municipal fund securities of different generic types or having various investment objectives; or

(c) offers, descriptions, and explanations of various products and services not constituting a municipal fund security, provided that such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a municipal fund security; or

(d) invitation to inquire for further information; provided that if an official statement for municipal fund securities is to be sent or delivered in response to such inquiries and if the sponsor of the advertisement is the underwriter for one or more of the issues of municipal fund securities for which such official statement may be supplied, the advertisement must state that such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities.

(2) certain blind advertisements – any advertisement that does not identify a broker, dealer or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer and that is limited to any one or more of the following:

(a) the name of an issuer of municipal fund securities; or

(b) contact information for an issuer of municipal fund securities or for any agent of such issuer to obtain an official statement or other information; provided that, if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source unless initiated by the customer; or

(c) a logo or other graphic design of an issuer of municipal fund securities that does not directly or indirectly identify the broker, dealer or municipal securities dealer or any affiliate of the broker, dealer or municipal securities dealer; or

(d) a service mark, trademark or short slogan of the issuer's general objectives that does not constitute a call to invest in municipal fund securities.

(3) certain form letters to existing customers – any form letter relating to municipal fund securities distributed solely to existing customers of the broker, dealer or municipal securities dealer to whom the broker, dealer or municipal securities dealer has previously sent or caused to be sent an official statement for:

(a) any municipal fund securities of the issuer of such municipal fund securities; or

(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(ii) **Performance Data.** Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) source of data – to the extent that information necessary to calculate performance data or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c) is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable

from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) period of calculation – if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) currentness of calculation – performance data and total annual operating expense ratio shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii); and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii)) are provided at the toll-free (or collect) telephone number or website identified pursuant to clause (i)(A)(3)(a) of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) 12b-1-type plans – where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940.

(E) tax-adjusted calculations – in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner.

(F) applicability with respect to underlying assets – notwithstanding any of the foregoing, this subsection (e)(ii) shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, Financial Industry Regulatory Authority, Inc. (FINRA) or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) **Nature of Issuer and Security.** An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-

sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.,* A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) **Capacity of Dealer and Other Parties.** An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would affect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.

(v) **Tax Consequences and Other Features.** Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes generalized statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must include a generalized statement that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly list the substantive factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(vi) **Underlying Registered Securities.** If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or FINRA advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection does not limit the applicability of any rule of the Commission, FINRA or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) **Correspondence Presenting Performance Data.** Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) Approval by Principal. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use. Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all such advertisements.

• • • Supplementary Material: ----------

.1 Investment Option. As used in Rule G-21(e), the term investment option shall have the same meaning as defined in Rule G-45(d)(vi).

.2 Contractual Financial Support Provided to Underlying Fund. Under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the specified disclosure ("The underlying fund's sponsor has no legal obligation to

provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time") if that disclosure is not applicable to the underlying fund under Rule 482(b)(4) pursuant to the Securities Act of 1933.

INTERPRETIVE GUIDANCE

INTERPRETATION ON GENERAL ADVERTISING DISCLOSURES, BLIND ADVERTISEMENTS AND ANNUAL REPORTS RELATING TO MUNICIPAL FUND SECURITIES UNDER RULE G-21
JUNE 5, 2007

Rule G-21, on advertising, establishes specific requirements for advertisements by brokers, dealers and municipal securities dealers ("dealers") of municipal fund securities, including but not limited to advertisements for 529 college savings plans ("529 plans"). This notice sets forth interpretive guidance under Rule G-21 with respect to time-limited broadcast advertisements, blind advertisements, and annual reports or other similar information required to be distributed under state mandates.

General Disclosures in Time-Limited Broadcast Advertisements

Rule G-21(e)(i)(A) requires certain basic disclosures to be provided in product advertisements for municipal fund securities. These disclosures are not legends requiring the inclusion of specific language. Rather, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement. In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

These required disclosures may present challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements with shorter run-times. In the context of time-limited broadcast advertisements, dealers should provide such disclosures in a manner that appropriately balances the intended message with the required disclosures. Given the unique nature of broadcast advertisements, where the oral presentation of more information can often result in a decreased likelihood that the central message of such information will be understood and retained, somewhat abbreviated forms of the required disclosures may be appropriate for such time-limited broadcast advertisements, particularly if the disclosures are made with close attention paid to ensuring that they are presented with equal prominence to the remainder of the message.

Thus, for example, in a time-limited broadcast advertisement for a non-money market 529 plan, the following language, spoken in a manner consistent with the remaining oral presentation of information, generally would satisfy the disclosure requirements of Rule G-21(e)(i)(A): "To learn about [529 plan name], its investment objectives, risks and costs, read the official statement available from [source]. Check with your home state to learn if it offers tax or other benefits for investing in its own 529 plan." Further, in a time-limited television advertisement, the source for the official statement, together with a contact telephone number or web address, generally could be displayed on screen while other portions of the disclosures are spoken. This example is intended to be illustrative and is not intended to be exclusive or to necessarily establish a baseline for disclosure.

Blind Advertisements

Under Rule G-21(e)(i)(B)(2), certain product advertisements for municipal fund securities that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates may omit the general disclosures otherwise required under Rule G-21(e)(i)(A). Among other things, such a blind advertisement may include contact information for the issuer or an agent of the issuer to obtain an official statement or other information, provided that if such issuer's agent is a dealer or dealer affiliate, no orders may be accepted through such source unless initiated by the customer. Although the contact information may direct a potential customer to a dealer or its affiliate acting as agent of the issuer, the face of the advertisement may not identify such dealer or affiliate.

For example, a blind advertisement may say "call 1-800-xxx-xxxx for more information" or "go to www. [state-name]-529plan.com for more information" but may not say "call [dealer name] at 1-800-xxx-xxxx for more information" or "go to www.[dealer-name]-529plan.com for more information." This provision does not preclude the person who answers a phone inquiry, or the website to which the URL links, from identifying the dealer or its affiliate, so long as such dealer or affiliate is clearly disclosed to be acting on behalf of the issuer identified in the advertisement.

If a potential customer initiates an order through the source identified in the advertisement, a distinct barrier between the providing of information and the seeking of orders must be maintained to qualify as a blind advertisement. For example, solely for purposes of Rule G-21(e)(i)(B)(2), a dealer may establish that the customer initiated the order by requiring, in the case of a telephone inquiry, that the customer be transferred from the initial dealer contact person to a different person before the customer provides any information used in connection with

an order or, in the case of a web-based inquiry, that the customer navigate from the initial webpage referred to in the advertisement to another page on the same or different web site before entering any information used in connection with an order.[1] Of course, the dealer must be mindful of its obligation under Rule G-17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market, regardless of whether the transaction was recommended or whether an order may be characterized as unsolicited.[2] In addition, if the transaction is recommended, the dealer must fulfill its obligations with respect to suitability under Rule G-19, on suitability of recommendations and transactions.[3]

Required Annual Reports Excluded from Definition of Advertisement

In some cases, a dealer may be required, by state law or the rules and regulations adopted by the state or an instrumentality thereof governing a particular 529 plan or other municipal fund security program, to prepare or distribute an annual financial report or other similar information regarding such plan or program. So long as a dealer provides any such required report or information with respect to a 529 plan or other municipal fund securities program solely in the manner required by such state law or rules and regulations, such report or information will not be treated as an advertisement for purposes of Rule G-21.[4] However, the dealer would remain subject to Rule G-17, which requires that the dealer deal fairly with all persons, prohibits the dealer from engaging in any deceptive, dishonest or unfair practice and requires the dealer to provide to its customer, at or prior to the time of trade, all material facts about a transaction known by the dealer or that are reasonably accessible to the market. In addition, if such information is used in any manner beyond what is narrowly required by such law, rules or regulation, such use of the information would become subject to Rule G-21 as an advertisement.[5]

Endnotes

1. These methods are not intended to be the exclusive means by which a dealer could establish that the customer initiated the order.

2. See Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, reprinted in MSRB Rule Book.

3. See Rule G-17 Interpretation – Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006, reprinted in MSRB Rule Book.

4. If such information is distributed through the official statement, then it would not be considered an advertisement by virtue of the exclusion of official statements from the definition of "advertisement" in Rule G-21(a)(i).

5. This guidance is consistent with similar guidance provided by NASD with respect to its advertising rule, Rule 2210, as applied to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with retirement investments and variable annuity contracts. See letter dated November 29, 2004, to Therese Squillacote, Chief Compliance Officer, ING Financial Advisers, LLC, from Philip A. Shaikun, Assistant General Counsel, NASD; letter dated September 30, 2002, to Sally Krawczyk, Esq., Sutherland, Asbill & Brennan, LLP, from Mr. Shaikun; and letter dated February 5, 1999, to W. Thomas Conner, Vice President, Regulatory Affairs, National Association of Variable Annuities, from Robert J. Smith, Office of General Counsel, NASD Regulation, Inc.

529 College Savings Plan Advertisements
May 12, 2006

529 College Savings Plan Advertisements

Thank you for your letter of April 21, 2006 in which you request interpretive guidance on the application of Rule G-21, on advertising, with respect to advertisements of 529 college savings plans. Rule G-21 was amended in 2005 by adding new section (e) relating to advertisements by brokers, dealers and municipal securities dealers ("dealers") of interests in 529 college savings plans and other municipal fund securities (collectively referred to as "municipal fund securities"). These new provisions were modeled after the provisions of Securities Act Rules 482 and 135a relating to mutual fund advertisements, with certain modifications.

The Board expects to undertake a detailed review of issues relating to the implementation of section (e) of its advertising rule in the coming months and your views will be instrumental in that review. We appreciate your interest in the operation of the rule and the commitment of your organization and your individual members to assure that investors receive appropriate disclosures. As you are aware, MSRB rules apply solely to dealers, not to issuers or other parties. The MSRB has previously stated that Rule G-21 does not govern advertisements published by issuers but that an advertisement produced by a dealer as agent for an issuer must comply with Rule G-21. Similarly, a dealer cannot avoid application of Rule G-21 merely by hiring a third party to produce and publish advertisements on its behalf.[1] Pending our detailed review of section (e) of Rule G-21, I would like to address certain basic principles under the current rule language and existing interpretive guidance that may prove helpful in the context of some of the issues you raise in your letter.[2]

Section (a) of the rule provides a broad definition of "advertisement."[3] Sections (b) through (e) of the rule establish requirements with respect to specific types of advertisements. Section (b) establishes standards for professional advertisements, which are advertisements concerning the dealer's facilities, services or skills with respect to municipal securities. Section (c) establishes general standards for product advertisements, with additional specific standards relating to advertisements for new issue debt securities set forth in Section (d) and specific standards relating to advertisements for municipal fund securities set forth in Section (e). In addition, all advertisements are subject to the MSRB's basic fair dealing rule, Rule G-17,[4] and are subject to approval by a principal pursuant to Section (f) of Rule G-21.
Where an advertisement does not identify specific securities, specific issuers of securities or specific features of securities, but merely refers to one or more broad categories of securities with respect to which the dealer provides services, the MSRB would generally view such advertisement as a professional advertisement under Section (b) rather than as a product advertisement. For example, if an advertisement simply states that the dealer provides investment services with respect to 529 college savings plans – without identifying any specific 529 college savings plan, specific municipal fund securities issued through a 529 college savings plan, or specific features of any such municipal fund securities – the advertisement would be subject to Section (b) of Rule G-21, rather than to Sections (c) and (e).

On the other hand, advertisements that identify specific securities, specific issuers of securities or specific features of securities generally are viewed as product advertisements under Rule G-21 and therefore would be subject to Section (c), as well as Section (d) or (e), if applicable. However, in some circumstances, an advertisement that identifies an issuer of securities without identifying its securities or specific features of such securities effectively may not constitute an advertisement of such issuer's securities and therefore would not be treated as a product advertisement under the rule, particularly if the dealer or any of its affiliates is not identified. For example, if an advertisement identifies the state or other governmental entity that operates a 529 college savings plan without identifying its municipal fund securities, the specific features of such securities or the dealer and its affiliates that may participate in the marketing of its municipal fund securities, the MSRB generally would not view such advertisement as a product advertisement subject to Sections (c) and (e) of Rule G-21.[5] *MSRB Interpretation of May 12, 2006.*

Endnotes

1. The MSRB expresses no opinion at this time as to the applicability of MSRB rules to advertisements relating to municipal fund securities produced and published by issuers with funds provided directly or indirectly by a dealer.

2. Other issues you raise in your letter will be considered during the upcoming review of Rule G-21.

3. An advertisement is defined as any material (other than listings of offerings) published or designed for use in the public, including electronic, media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements (including program disclosure documents), but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers. The MSRB expresses no opinion at this time as to whether the specific communications or promotional materials described in your letter would constitute advertisements under this definition.

4. Rule G-17 requires each dealer, in the conduct of its municipal securities activities, to deal fairly with all persons and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice.

5. The advertisement may, in addition to or instead of identifying the state or other governmental entity that operates the 529 college savings plan, include the state's marketing name for such plan so long as such name does not identify the dealer or any dealer affiliates that may participate in the marketing of its municipal fund securities. Further, any contact information (such as a telephone number or Internet address) included in the advertisement should be for the state or other governmental entity and must not be for the dealer or its affiliates.

DISCLOSURE OBLIGATIONS
MAY 21, 1998

Disclosure obligations

This is in response to your letters dated March 18, 1998 and March 31, 1998 in which you present an example where a dealer advertises a specific municipal security which it knows, or has reason to know, is subject to a material adverse circumstance such as a technical default. You ask whether a dealer is obligated to include disclosure information indicating that a bond is subject to additional risk in order to avoid publishing a false or misleading advertisement as prohibited by rule G-21(c). The Board reviewed your letters and has authorized this response.

Section (c) of rule G-21 provides, among other things, that no dealer shall publish any advertisement[1] concerning municipal securities which such dealer knows or has reason to know is materially false or misleading. The Board has previously interpreted the rule as not requiring that any specific statements or information be included in an advertisement but that any statement or information that is included must not be materially false or misleading. Thus, if a dealer makes a statement in an advertisement that explicitly or implicitly refers to the soundness or safety of an investment in the municipal securities described in the advertisement, such dealer must include any information necessary to ensure that the advertisement is not materially false or misleading with respect to the soundness or safety of such investment. The rule establishes a general ethical standard that provides the enforcement agencies with the flexibility that is needed to evaluate advertisements in light of what information is printed and how the information physically is presented. Thus, the enforcement agencies should continue to evaluate advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading.

You also ask whether the relative specificity of any such disclosure obligation that may exist depends on the level of detail provided about the municipal security. As stated above, rule G-21 does not require that any specific statements or information be included in an advertisement but that any statement or information that is included must not be materially false or misleading. Thus, the nature and extent of any disclosures or other explanatory statements that must be included in an advertisement is dependent upon the substance and form of the information presented in the advertisement.

The Board wishes to emphasize that the enforcement agencies should remain cognizant of certain other rules of the Board that may be relevant in evaluating whether a dealer's advertisement and such dealer's interactions with customers or potential customers that arise as a result of such advertisement are in conformity with Board rules. Thus, depending upon the facts and circumstances, an advertisement for a particular municipal security that on its face conforms with the requirements of rule G-21 may nonetheless be violative of rule G-17, the Board's fair dealing rule,[2] if, for example, the advertisement is designed as a "bait-and-switch" mechanism that attracts potential customers interested in an advertised security that the dealer is not in a legitimate position to sell (because of its unavailability, unsuitability or otherwise) for the primary purpose of creating a captive audience for the offering of other securities. In addition, a dealer that in fact sells the municipal securities that are described in its advertisement must fulfill its obligations under rule G-19, on suitability, and rule G-30, on pricing. *MSRB Interpretation of May 21, 1998.*

Endnotes

1. "Advertisement" is defined in rule G-21 as any material (other than listings of offerings) published or designed for use in the public, including electronic, media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers.

2. Rule G-17 requires each dealer, in the conduct of its municipal securities business, to deal fairly with all persons and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice.

ADVERTISEMENTS ON BEHALF OF ISSUER
JUNE 20, 1994

Advertisements on behalf of issuer

You ask whether a certain advertisement is subject to approval by a principal pursuant to rule G-21, on advertising. You state that an issuer asked the bank to act as its agent in producing the advertisement. Rule G-21 defines an advertisement as any material (other than listings of offerings) published or designed for use in the public media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers. Each advertisement subject to the requirements of rule G-21 must be approved in writing by a municipal securities principal or general securities principal prior to first use. The fact that a bank dealer is acting as an agent of an issuer in the production of an advertisement meeting the definition contained in rule G-21 does not relieve a bank from complying with the requirements of the rule. *MSRB Interpretation of June 20, 1994.*

ADVERTISEMENTS SHOWING CURRENT YIELD
APRIL 22, 1998

Advertisements showing current yield

This is in response to your letter concerning the application of rule G-21, on advertising, to advertisements that include information on current yield of municipal securities.[1] You have asked for the Board's views whether including current yield information in advertisements for municipal securities, alone or with other yield information, would be materially misleading. You also ask if a dealer may advertise current yield if other yield information is included but is in smaller print. The Board has considered this issue and authorized this reply.

Rule G-21 prohibits a dealer from publishing an advertisement concerning a municipal security that the dealer knows or has reason to know is materially false or misleading. The Board has stated that an advertisement showing a percentage rate of return must specify whether it is the coupon rate or the yield. The Board noted that, if a yield is presented, the advertisement must indicate the basis on which the yield is calculated.[2]

The Board frequently has stated that the yield to call or yield to maturity is the most important factor in determining the fairness and reasonableness of the price of any given transaction in municipal securities. Such yields typically are used as a basis for dealers and customers to evaluate an investment in municipal securities. The disclosure of yield to call or yield to maturity is the longstanding practice of the municipal securities industry and this practice is reflected in rule G-15(a) which requires dealers to disclose yield to call or yield to maturity on customer confirmations.[3] A customer who purchases a municipal security relying only on the current yield information disclosed in an advertisement would be confused upon receipt of the confirmation when the yield to call or yield to maturity of the security is different. Moreover, a customer would not be able to compare municipal securities advertised at a current yield with those advertised at a yield to call or yield to maturity.[4]

The Board has determined that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G-21. Thus, dealers may not show only current yield in municipal securities advertisements.

The Board is concerned that, even if dealers comply with this interpretation of rule G-21 and include current yield and other yield information in municipal securities advertisements, such advertisements still could be misleading due to the size of type used and the placement of the information. For example, it would not be appropriate for the type size of the current yield to be larger than other yield information. Thus, whether a particular advertisement is materially misleading requires the appropriate regulatory body, for example, an NASD District Business Conduct Committee, to consider a number of objective and subjective factors. The Board urges the regulatory authorities to continue to review advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading. *MSRB Interpretation of April 22, 1988.*

Endnotes

1. Current yield is a calculation of current income on a bond. It is the ratio of the annual dollar amount of interest paid on a security to the purchase price of the security, stated as a percentage. If the securities are sold at par, the current yield equals the coupon rate on the securities. Current yield, however, does not take into account the time value of money. Thus, generally, if a bond is selling at a discount, the current yield would be less than the yield to maturity and, if the bond is selling at a premium, the current yield would be greater than the yield to maturity.

2. Frequently Asked Questions Concerning Advertising, MSRB Reports, Vol. 3, No. 2 (Apr. 1983), at 21-23.

3. Rule G-15(a)(i)(1) [currently codified at rule G-15(a)(i)(A)(5)] requires that the yield or dollar price at which the transaction was effected be disclosed on customer confirmations, with the resulting dollar price (if the transaction is done on a yield basis) or yield (if the transaction is done on a dollar basis) calculated to the lowest of dollar price or yield to call, to par option or to maturity. In cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, this must be stated and the call or option date and price used in the calculation must be shown.

4. The Board also notes that some dealers have used current yield in municipal securities advertisements in an attempt to compete with municipal securities mutual funds, which often use a "current yield" in their advertisements. However, a mutual fund "yield" is not directly comparable to a municipal securities yield because a mutual fund "yield" represents historical information, while the yield on a municipal security represents a future rate of return.

ADVERTISING OF SECURITIES SUBJECT TO ALTERNATIVE MINIMUM TAX
FEBRUARY 23, 1988

Advertising of securities subject to alternative minimum tax

This is in response to your letter concerning the application of rule G-21, on advertising, to advertisements for municipal securities subject to the alternative minimum tax (AMT). You state that advertisements for municipal securities usually note that the securities are "free from federal and state taxes." You ask whether an advertisement for municipal securities subject to AMT should note the applicability of AMT if such advertisements describe the securities as "tax exempt." The Board has considered the issue and authorized this reply.

Rule G-21(c) prohibits a broker, dealer or municipal securities dealer from publishing any advertisement concerning municipal securities which the broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading. The Board has stated that the use of the term "tax exempt" in advertisements for municipal securities connotes that the securities are exempt from all federal, state and local income taxes. If this is not true of the security being advertised, the Board has required that the use of the term "tax exempt" in an advertisement must be explained, *e.g.*, by footnote. In regard to municipal securities subject to AMT, the Board has determined that advertisements for such securities that describe the securities as being exempt from federal income tax also must describe the securities as subject to AMT. *MSRB Interpretation of February 23, 1988.*

[1] Frequently asked questions concerning advertising, *MSRB Reports*, Vol. 3, No. 2 (April 1983), at 22

ADVERTISEMENTS OF SECURITIES NOT OWNED
JULY 1, 1982

Advertisements of securities not owned

This is in response to your letter of May 5, 1982 concerning a dealer bank's advertising practices. Your letter states that the dealer bank has recently published newspaper advertisements which list specific municipal securities as "Current Offerings," and that your review of the dealer's inventory positions has disclosed that "on the date the advertisement was published the dealer held no position in four of the issues advertised and a nominal position in the fifth advertised issue." Your letter reports that the dealer stated that it was his intention to obtain the advertised issues from other dealers when customer orders were received. Your first question is whether "it is misleading and thus in violation of rule G-21, to advertise securities which the dealer does not own..."

The Board has recently considered this advertising practice and concluded that it would not violate Board rules provided that: (1) the advertisement indicates that the securities are advertised "subject to availability;" (2) the dealer placing the advertisement is not aware that the bonds are no longer available in the market; and (3) the dealer would attempt to acquire the bonds advertised if contacted by a potential customer.

Your letter also expresses concern that this type of advertising might be seriously misleading to customers since the advertisement must be prepared and the printer's proof copy approved five days in advance of the date of publication. You note that "significant changes in the market can occur over a five, or even three-day period" and that, if such market changes had occurred between submission and publication of the advertisement, the customer could be seriously misled. The Board is aware that delays occur between the time an advertisement is composed and approved for publication by a municipal securities dealer and the time it is actually published. The Board believes that inclusion in the advertisement of a statement indicating that the securities are advertised subject to change in price provides adequate notice to a potential customer that the prices and yields quoted in the advertisement may not represent market yields and prices at the time the customer contacts the dealer. *MSRB Interpretation of July 1, 1982.*

CONTENTS OF ADVERTISEMENT: PUT OPTIONS
JULY 13, 1981

Contents of advertisement: put options

Your letter dated June 15, 1981, has been referred to me for response. In your letter you mention our previous conversation regarding the appropriate definition of "put bonds", which definition your firm would like to use in advertisements offering such securities for sale. You request confirmation of the Board's views concerning the aspects of the "put option" feature on these securities that would be appropriate to cover in such a definition.

The type of "put option" issue with which the Board is familiar, and which we discussed, has a provision in the indenture which permits the holder of the securities to tender or "put" the securities back to the issuer on specified dates at par. This feature typically commences six (or more) years after the date of issuance, is exercisable only once annually (on an interest payment date), and is exercisable only upon the provision of irrevocable prior notice to the issuer (typically three or more months before the exercise date).

If I remember our conversation correctly, you indicated that the firm wished to describe a security of this type in an advertisement as having a "put option" feature, available once annually, permitting redemption of the securities at par. I suggested that, while the items of information you detailed were appropriate, it might also be advisable to mention in the advertisement the "prior notice" requirement under the option exercise procedure. It would also be helpful to make clear the irrevocable nature of such notice.

If the content of your definition of the "put option" feature goes beyond the items we discussed (for example, by indicating that the "put option" is secured by a bank letter of credit, additional disclosures might also be appropriate. *MSRB Interpretation of July 13, 1981.*

LEGEND SATISFYING REQUIREMENT
AUGUST 28, 1979

Legend satisfying requirement

I refer to your letter of June 29, 1979 in which you request advice regarding rule G-21(c) on product advertisements. As you noted in your letter, the notice of approval of rule G-34 [prior rule on advertising] stated that the Board believes that the advertisements may be misleading if they show

> only a percentage rate without specifying whether it is the coupon rate or yield and, if yield, the basis on which calculated (for example, discount, par or premium securities and if discount securities, whether before-tax or after-tax yield).

You have requested advice as whether the following legend, to be used in connection with the sale of discount bonds, would be satisfactory for purposes of the rule:

> "Discount bonds may be subject to capital gains tax. Rates of such tax vary for individual taxpayers. Discount yields shown herein are gross yields to maturity."

As I previously indicated to you in our telephone conversation, the proposed legend would satisfy the requirements of rule G-21(c). *MSRB Interpretation of August 28, 1979.*

SECURITIES INVESTOR PROTECTION CORPORATION

SIPC ADVERTISING BYLAW
AS AMENDED AUGUST 2016

Article 10. MEMBER ADVERTISING

Section 1. General

Pursuant to Section 15(d) of the Act, as amended, this Article provides for the official symbol, the official advertising statement, and the official explanatory statement of SIPC. In addition, it sets forth certain requirements, prohibitions, and other guidelines for the use of these official devices by members.

Section 2. Definitions

(a) Advertising - The term "advertising" as used in this Section shall mean promotional material used in or on any newspaper, magazine, or other periodical, radio, television, telephone or tape recording, videotape display, motion picture, slide presentation, telephone directory, sign or billboard, electronic or other public media.

(b) Branch Office - The term "branch office" as used in this Section shall mean any office of a member which is registered with or designated as a branch office with any self-regulatory organization.

(c) Official Brochure - The term "official brochure" as used in this Section shall mean any publication so designated by the Corporation which explains the purposes of the Corporation and the protections it affords and which is authorized for public distribution.

(d) Official Advertising Statement - The term "official advertising statement" as used in this Section shall be "Member of the Securities Investor Protection Corporation." The word "the" or the words "of the" may be omitted. The words "This firm is a" may be added before the word "member." The short title "Member of SIPC" or "Member SIPC" may be used by members at their option as the official advertising statement. When the official advertising statement is used on the Internet, the words "Securities Investor Protection Corporation" and "SIPC" shall contain a hyperlink to SIPC's website.

(e) Official Explanatory Statement - The term "official explanatory statement" as used in this Section shall be either: (1) "Member of SIPC, which protects securities customers of its members up to $500,000 (including $250,000 for claims for cash). Explanatory brochure available upon request or at www.sipc.org." or (2) "Member of SIPC. Securities in your account protected up to $500,000. For details, please see www.sipc.org." The words "Member of SIPC" may be omitted if the official explanatory statement is used in conjunction with the official symbol. When the official explanatory statement is used on the Internet, "SIPC" and "www.sipc.org" shall contain a hyperlink to SIPC's website.

(f) Official Symbol - The "official symbol," which may be displayed in a variety of sizes, colors or materials, shall be of the following design:

When the symbol is so reduced in size that the words "member" and "Securities Investor Protection Corporation" are illegible, these words may be omitted. When the official symbol is used on the Internet, "SIPC" shall contain a hyperlink to SIPC's website.

Section 3. Mandatory Display by Members

Except as provided in Section 5 below, effective January 1, 1979, each member of SIPC shall continuously display in a prominent place the official symbol (as prescribed in (2)(f) above) at its principal place of business and at each branch office.

Section 4. Mandatory Inclusion of Member Advertising

Except as provided in Sections 5, 6 and (8)(b) below, effective January 1, 1979, members of SIPC shall include in all advertising (as defined in 2(a) above) a reproduction of the official symbol or the official advertising statement or the official explanatory statement (as defined in Section 2(f), 2(d) and 2(e), respectively).

Section 5. Exemptions

(a) No member shall be required to display the official symbol until thirty (30) days after its first day of operation as a member.

(b) No member shall be required to display the official symbol at any office where such display would be misleading to the public in that none of the business transacted in such office appears likely to give rise to claims of public customers which might be protected with SIPC funds in the event the member should be liquidated under the provisions of the Act as amended.

(c) Upon written application by a member, the Corporation may grant an exemption from the requirements of Section 3 or 4 above, if it finds that (1) compliance with the requirement may be misleading to the public or result in undue hardship to the member and (2) an exemption from the requirement is consistent with the purposes of this bylaw.

Section 6. Optional Inclusion in Member Advertising

The following is an enumeration of the types of advertising which may, but need not, include the official symbol, advertising statement or explanatory statement:

(a) Signs or plates in the office or attached to the building or buildings in which the member's offices are located;

(b) Listings in directories;

(c) Classified or display advertisements relating to the recruitment of personnel;

(d) Advertisements not setting forth the name of the member;

(e) Printed advertisements which do not exceed 10 square inches in space;

(f) Advertisements by radio or telephone recording which do not exceed 30 seconds in time;

(g) Advertisements by television which do not exceed 15 seconds in time;

(h) Advertisements relating to underwriting offerings, investment banking activities, mergers and acquisitions, and personnel announcements; and

(i) Internal news wires.

Section 7. Other Optional Inclusion by Members

The official symbol, advertising statement, or explanatory statement may also, but need not, be included in communications media other than those defined as advertising in Section 2(a) above, including, but not limited to, the following:

(a) Supplies, such as trade confirmations, stationery, envelopes, checks, statements;

(b) Customers' statements;

(c) Promotional items, such as calendars, matchbooks, pens, paperweights;

(d) Telephone market reports;

(e) Research reports;

(f) Annual reports; and

(g) Direct mail brochures, market letters, and similar communications.

Section 8. Prohibitions on Member Advertising

(a) No member shall display any sign or symbol, or include any symbol, statement, or explanation relating to SIPC or membership therein in any advertising, promotional or other material other than the official brochure, symbol and statements as specified in Section 2 above.

(b) Notwithstanding the provisions of Sections 3, 4, 6 and 7 above, advertisements or other material relating primarily to services or types of investments which might, if the official symbol, the official advertising statement, or the official explanatory statement were included therein, reasonably be deemed misleading to public customers, may not include any reference to SIPC except, where applicable rules or regulations of any self-regulatory organization require, a forthright disclaimer of SIPC protection.

An advertisement including the official symbol, the official advertising statement, or the official explanatory statement might be misleading if the Act as amended would not under most circumstances provide protection with respect to the investment or service advertised or if it might appear that SIPC protects or insures the quality of such investment or service. Matters to which the prohibition of this paragraph apply include, but are not limited to, those relating primarily to the following:

(A) Commodities or related contracts or futures contracts or any warrant or right to subscribe to, purchase or sell any of the same, other than futures contracts or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Securities and Exchange Commission.

(B) Direct investments in real estate and real estate or mortgage brokerage.

(C) Insurance.

(D) Investment services which are exclusively advisory in character.

(E) Interests which are not included in the definition of the term "security" in the Act.

APPENDIX A

REGULATORY NOTICES – SUBJECT INDEX

Account Statements 08-77;
Approval & Recordkeeping 08-73; 08-12; 07-64; 06-45; 05-27; 03-33; 98-11; 96-82
Auction Rate Securities 08-21
Bond Mutual Fund Volatility/Risk Rating 06-05; 01-58; 00-23; 96-84
Branch Offices 06-12; 05-67; 02-52
Brokerage Account Fee Disclosure 13-23
BrokerCheck Link 15-05; 14-19
Capital Acquisition Brokers 16-37
Cash Alternatives 08-82
Certificates of Deposit 02-69; 02-28
Correspondence 06-45; 99-03; 98-83; 98-11; 96-82
Communications with the Public 17-06; 16-41; 15-17; 15-16; 14-30; 14-19; 14-14; 12-29; 03-38; 09-55; 01-45; 99-79
Complex Products 12-03
Crowdfunding 16-07; 13-34
Day-Trading 02-35; 00-62
Direct Participation Programs 15-02; 13-18; 12-14; 11-44
Electronic Communications 11-39; 10-06; 07-59; 07-30; 03-33; 98-03; 96-50
Enforcement Process 09-17
Equity Indexed Annuities 05-50
Exchange Traded Funds 09-31
Expertise 08-27
Fee Disclosure in Brokerage and Retirement Account Communications 13-23
Filing Fees 12-32; 04-92; 98-97
FINRA Logo Information Notice - 1/8/16
FINRA Membership/Name 07-47; 07-02
Foreign Currency Exchange 08-66
Funding Portal Rule 16-06
High Yield Securities 08-81
Home Equity Funded Investments 04-89
Illiquid Investments 08-30
Indications of Interest 09-28
Individual Retirement Accounts 13-45; 13-23
Investment Analysis Tools 04-86; 02-51
Investment Company Rankings 97-28
Investment Company Research Report 00-15
IRA Rollovers 13-45
JOBS Act 16-07
Life Settlements 09-42
Margin Risk Disclosure 07-14; 02-35
Municipal Fund Securities 03-17
Mutual Funds 08-58; 06-48; 06-05; 04-72; 04-26; 03-77; 03-50; 03-48; 00-21; 98-107; 97-28
National Do-Not-Call Registry 05-07; 04-15

Non-Conventional Investments 03-71

Options 08-73; 4/20/2011; 2/7/2011; 12/29/2009; 08-28

Principal Protected Notes 09-73

Private Placements 16-07; 12-40; 11-04; 10-22; 05-18

Real Estate Investment Trusts 13-18; 11-44

Regulation A Offerings 15-32

Regulation D Offerings 10-22; 05-18

Reverse Convertibles 10-09

Research Reports 15-31; 15-30; 14-30; 12-09; 11-41; 11-11; 08-55; 08-16; 08-15; 07-64; 07-12; 07-04; 06-36; 05-34; 05-24; 05-14; 04-81; 04-18; 03-44; 02-44; 02-39; 00-15; 98-54; 12-42

Retirement Account Fee Disclosure 13-23; 12-02

Sanction Guidelines 11-13; 11-07; 05-17

Security Futures 02-73

Senior Investors 07-43; 11-52

SIPC 07-29

Social Media 17-18, 11-39; 10-06; 07-59; 07-30; 03-33; 98-03; 96-50

Stocks 99-11

Structured Products 12-03; 10-09; 09-73; 05-59

Suitability 11-25; 11-02

Supervision 14-10; 11-14; 09-10; 08-24; 07-12; 05-50; 05-29; 04-71; 03-33; 98-38; 98-11; 96-82; 96-50

Tenants-in-Common Interests 05-18

Telemarketing 12-17; 97-01

Variable Products 08-39; 06-38; 04-45; 00-44; 99-35; 97-27; 96-86

APPENDIX B

REGULATORY NOTICES – CHRONOLOGICAL ORDER

2017

17-18 Social Media and Digital Communications

2016

16-41 SEC Approves Amendments to Rules Governing Communications With the Public

16-37 SEC Approves FINRA's Capital Acquisition Broker (CAB) Rules

16-07 SEC Approval of FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act)

Information Notice January 8, 2016 Use of FINRA Logo

2015

15-50 SEC Appproves Rule Requiring Members' Websites to Include a Readily Apparent Reference and Hyperlink to BrokerCheck

15-32 FINRA Filing Requirements and Review of Regulation A Offerings

15-31 SEC Approves Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Debt Research Reports

15-30 SEC Approves Consolidated Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Equity Research Reports

15-17 Guidance on Rules Governing Communications With the Public

15-16 FINRA Requests Comment on Proposed Amendments to Rules Governing Communications With the Public

2014

14-54 FINRA Reminds Firms of Extended Hours Trading Disclosures

14-30 SEC Approves Amendments to FINRA Rule 2210 to Exclude Research Reports on Exchange-Listed Securities from Filing Requirements and Clarify the Standards Applicable to Free Writing Prospectuses

14-19 FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public

14-14 FINRA Requests Comment on the Effectiveness and Efficiency of its Communications with the Public Rules

14-10 SEC Approves New Supervision Rules

2013

13-45 FINRA Reminds Firms of Their Responsibilities Concerning IRA Rollovers

13-34 FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms

13-23 FINRA Provides Guidance on Disclosure of Fees in Communications Concerning Retail Brokerage Accounts and Individual Retirement Accounts

13-18 FINRA Provides Guidance on Communications with the Public Concerning Unlisted Real Estate Investment Programs

13-03 FINRA Provides Guidance on New Rules Governing Communications with the Public

2012

12-40 SEC Approves New FINRA Rule 5123 Regarding Private Placements of Securities

12-32 Changes to Advertising, Corporate Financing, New Membership and Continuing Membership Application, Central Registration Depository and Branch Office Annual Registration Fees

12-29 SEC Approves New Rules Governing Communications with the Public

12-17 SEC Approves Consolidated Telemarketing Rule

12-03 Heightened Supervision of Complex Products

12-02 FINRA Provides Guidance on Application of Communications Rules to Disclosures Required by Department of Labor

2011

11-52 FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designations

11-49 FINRA Provides Guidance on Advertising Regulation Issues

11-41 FINRA Provides Guidance on Prohibition Against Offering Favorable Research to Induce Investment Banking Business

11-39 Guidance on Social Networking Websites and Business Communications

11-25 New Implementation Date for and Additional Guidance on the Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations

11-02 SEC Approves Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations

2010

10-52 Application of Rules on Communications with the Public and Institutional Sales Material and Correspondence to Certain Free Writing Prospectuses

10-22 Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings

10-19 FINRA Reminds Firms of Responsibilities When Providing Customers with Consolidated Financial Account Reports

10-09 FINRA Reminds Firms of Their Sales Practice Obligations With Reverse Exchangeable Securities (Reverse Convertibles)

10-06 Guidance on Blogs and Social Networking Web Sites

2009

09-73 FINRA Reminds Firms of Their Sales Practice Obligations Relating to Principal-Protected Notes

09-42 FINRA Reminds Firms of Their Obligations with Variable Life Settlement Activities

09-31 FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds

09-28 FINRA Reminds Firms of Their Obligation to Provide Accurate Information in Disseminating, or Using Services to Disseminate, Indications of Interest

09-10 SEC Approves Rule Relating to Supervision of Market Letters

2008

08-82 FINRA Reminds Firms of Their Sales Practice Obligations with Regard to Cash Alternatives

08-81 FINRA Reminds Firms of Their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment

08-77 Customer Account Statements: FINRA Provides Guidance on Estimated Annual Income and Estimated Yield

08-73 SEC Approves Amendments to NASD Rule 2220 to Update the Standards for Options Communications

08-66 FINRA Addresses Firms' Retail Foreign Currency Exchange Activities

08-58 Guidance on Disclosure Concerning the U.S. Treasury Department's Temporary Guarantee Program for Money Market Mutual Funds

08-30 Guidance Relating to Illiquid Investments

08-27 The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise

08-21 FINRA Issues Guidance to Broker-Dealers on Partial Redemptions of Auction Rate Securities

08-16 Member Firm Disclosure and Supervisory Review Obligations

08-15 Foreign Research Analyst Exemption from the Research Analyst Qualification Examination

08-12 SEC Approves Amendment to NASD Rule 2210 to Create an Exception to the Principal Approval Requirements for Certain Filed Sales Material

2007

07-64 SEC approves amendments to NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports

07-59 FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications This Notice was updated on 12/13/07 to reflect non-substantive changes.

07-53 SEC Approves New NASD Rule 2821 Governing Deferred Variable Annuity Transactions

07-47 Amendments to NASD IM-2210-4: Web Site References to FINRA Membership and Limitations on the Use of FINRA's Name and Other Corporate Names Owned by FINRA

07-43 FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers

07-29 SEC Approves Rule 2342 Setting Forth Requirements for Providing SIPC Information to Customers

07-14 Portfolio Margin Risk Disclosure Statement and Written Acknowledgement to be Furnished to Customers Using a Portfolio Margin Account

07-04 Codification of Interpretations to Rule 2711

07-02 SEC Approves Amendment to Interpretive Material 2210-4 (Limitations on Use of NASD's Name) Requiring Firms that Refer to their NASD Membership on a Web Site to Provide a Hyperlink to www.nasd.com

2006

06-48 SEC Approves Amendments to NASD Rules 2210 and 2211 to Require Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material

06-45 SEC Approves Amendments to NASD Rule 2211 to Require Principal Pre-Use Approval of Certain Member Correspondence Sent to 25 or More Existing Retail Customers within a 30 Calendar-Day Period

06-38 Member Obligations with Respect to the Sale of Existing Variable Life Insurance Policies to Third Parties

06-36 NASD and NYSE Joint Interpretive Guidance on Fixed Income Research

06-12 Extension of Effective Date of NASD Uniform Branch Office Definition and Certain Form BR and Form U4 Filing Requirements from May 1, 2006 to July 3, 2006 Joint Interpretive Guidance from NASD and the NYSE Relating to Uniform Branch Office Definition under NASD Rule 3010(g)(2) and NYSE Rule 342.10

06-05 SEC Approves Permanent Rules Concerning Bond Mutual Fund Volatility Ratings

2005

05-67 SEC Approves Uniform Branch Office Definition and Related Interpretive Material

05-59 NASD Provides Guidance Concerning the Sale of Structured Products

05-50 Member Responsibilities for Supervising Sales of Unregistered Equity-Indexed Annuities

05-34 SEC Approves Amendments to Rule 2711 to Prohibit Research Analysts from Participating in a Road Show and from Communicating with Customers in the Presence of Investment Banking Personnel or Company Management about an Investment Banking Services Transaction

05-29 Guidance Regarding Rule 3012(a)(1) Requirement to Test and Verify a Member's Supervisory Policies and Procedures

05-18 NASD Issues Guidance on Section 1031 Tax-Deferred Exchanges of Real Property for Certain Tenants-in-Common Interests in Real Property Offerings

05-07 SEC Approves Amendments to Rule 2212 Concerning Frequency of Updates from the National Do-Not-Call Registry

2004

04-89 NASD Alerts Members to Concerns When Recommending or Facilitating Investments of Liquefied Home Equity

04-86 SEC approves NASD Interpretive Material to Rule 2210 regarding member firms' use of investment analysis tools

04-72 Impermissible Use of Negative Response Letters for the Transfer of Mutual Funds and Variable Annuities (Changes in Broker-Dealer of Record)

04-71 SEC Approves New Rules and Rule Amendments Concerning Supervision and Supervisory Controls

04-64 SEC Announces Immediate Effectiveness of the Deletion of IM-2210-4(b) and Rule Series 3400 as Obsolete

04-35 NASD Reminds Member Firms of Their Obligations to File Certain Financial Reports

04-26 NASD Reminds Members of Their Duty to Ensure Proper Application of Discounts in Sales Charges to Sales of Unit Investment Trusts (UITs)

04-18 NASD and NYSE Provide Further Guidance on Rules Governing Research Analysts' Conflicts of Interest

04-15 SEC Approves Amendments to NASD Rules Concerning Member Participation in the National Do-Not-Call Registry

2003

03-50 NASD Reminds Member Firms of their Obligations Regarding Mutual Fund Transactions and Directs Review of Policies and Procedures

03-48 SEC Approves Extension of Pilot Relating to Bond Mutual Fund Volatility Ratings

03-38 SEC Approves Amendments to NASD Rules Governing Member Communications with the Public

03-33 Clarification for Members Regarding Supervisory Obligations and Recordkeeping Requirements for Instant Messaging

03-17 Sales Material for Municipal Fund Securities

2002

02-73 SEC Approves New Rules and Rule Amendments Concerning Security Futures

02-69 Clarification of Member Obligations Regarding Brokered Certificates of Deposit

02-57 Use of Negative Response Letters for the Bulk Transfer of Customer Accounts

02-35 NASD Adopts Amendments Regarding the Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites

02-39 SEC Approves Rule Governing Research Analysts Conflicts of Interest

02-28 Member Obligations Regarding Long-Term or Brokered Certificates of Deposit Note: This Notice is superseded by Notice to Members 02-69

2001

01-58 Rules Relating to Bond Mutual Fund Volatility Ratings Extended Two Years

2000

00-62 SEC Approves Day-Trading Rules

00-44 NASD Reminds Members of Their Responsibilities Regarding the Sale of Variable Life Insurance

00-23 SEC Approves New Rules Relating to Bond Mutual Fund Volatility Ratings

00-21 NASD Regulation Reminds Members of Their Responsibilities When Advertising Recent Mutual Fund Performance

1999

99-35 The NASD Reminds Members of Their Responsibilities Regarding the Sales of Variable Annuities

99-11 NASD Regulation Issues Guidance Regarding Stock Volatility

99-03 SEC Approves Rule Amendments Requiring Review of Incoming, Written Correspondence

1998

98-107 NASD Reminds Members of Their Obligations to Disclose Mutual Fund Fees

98-083 SEC Approves Rule Change Relating to Standards for Individual Correspondence

98-038 NASD Reminds Members of Supervisory and Inspection Obligations

98-011 SEC Approves Rules Regarding Supervision, Review, and Record Retention of Correspondence

98-003 Electronic Delivery of Information between Members and Their Customers

1997

97-27 Application of NASD Conduct Rules to Group Variable Contracts and Other Exempted Securities

97-01 Approval of Telemarketing Amendments

1996

96-86 NASD Regulation Reminds Members and Associated Persons That Sales of Variable Contracts are Subject to NASD Suitability Requirements

APPENDIX C
RETIRED FINRA RULES

FINRA Rule 2210

2210. Communications with the Public

Past version: effective from Jul 16, 2016 - Jan 8, 2017.

(a) Definitions
For purposes of this Rule and any interpretation thereof:

(1) "Communications" consist of correspondence, retail communications and institutional communications.

(2) "Correspondence" means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) "Institutional communication" means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.

(4) "Institutional investor" means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) "Retail communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) "Retail investor" means any person other than an institutional investor, regardless of whether the person has an account with a member.

(b) Approval, Review and Recordkeeping

(1) **Retail Communications**

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to NYSE Rule 344 with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in

Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rules 3110(b) and 3110.06 through .09:

(i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 2241(a)(11)(A) or "debt research report" under Rule 2242(a)(3)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) **Correspondence**

All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) **Institutional Communications**

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) **Recordkeeping**

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of Rules 3110.09 and 4511.

(c) Filing Requirements and Review Procedures

(1) **Requirement for Certain Members to File Retail Communications Prior to First Use**

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) **Requirement to File Certain Retail Communications Prior to First Use**

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(C) Retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule 2213.

(3) **Requirement to File Certain Retail Communications**

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2). The filing of any retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the retail communication.

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Any template for written reports produced by, or retail communications concerning, an investment analysis tool, as such term is defined in Rule 2214.

(D) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(E) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (D) of paragraph (c)(3).

(4) **Filing of Television or Video Retail Communications**

If a member has filed a draft version or "story board" of a television or video retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) **Date of First Use and Approval Information**

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

(6) **Spot-Check Procedures**

In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(7) **Exclusions from Filing Requirements**

The following communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4):

(A) Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information.

(C) Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D) Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E) Retail communications that do no more than identify the member or offer a specific security at a stated price.

(F) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state, or that is exempt from such registration, and free writing prospectuses that are exempt from filing with the SEC, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion.

(G) Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended, or any rule thereunder, such as Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

(H) Press releases that are made available only to members of the media.

(I) Any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

(J) Correspondence.

(K) Institutional communications.

(L) Communications that refer to types of investments solely as part of a listing of products or services offered by the member.

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

(O) Research reports as defined in Rule 2241 that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to Section 24(b) of the Investment Company Act.

(8) **Communications Deemed Filed with FINRA**

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(9) **Filing Exemptions**

(A) Pursuant to the Rule 9600 Series, FINRA may exempt a member from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(d) Content Standards

(1) **General Standards**

(A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information 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.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

(2) **Comparisons**

Any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(3) **Disclosure of Member's Name**

All retail communications and correspondence must:

(A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3) does not apply to so-called "blind" advertisements used to recruit personnel.

(4) **Tax Considerations**

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;
d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

(5) **Disclosure of Fees, Expenses and Standardized Performance**

(A) Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of distribution or submission for publication of a communication; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) **Testimonials**

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) **Recommendations**

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;
(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.”

(D)(i) This paragraph (d)(7) does not apply to any communication that meets the definition of "research report" for purposes of Rule 2241 or that meets the definition of "debt research report" for purposes of Rule 2242, and includes all of the disclosures required by Rule 2241 or 2242, as applicable.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

(8) **BrokerCheck**

(A) Each of a member's websites must include a readily apparent reference and hyperlink to BrokerCheck on:

(i) the initial webpage that the member intends to be viewed by retail investors; and

(ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors.

(B) The requirements of subparagraph (A) shall not apply to:

(i) a member that does not provide products or services to retail investors; and

(ii) a directory or list of registered persons limited to names and contact information.

(9) **Prospectuses Filed with the SEC**

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC and free writing prospectuses that are exempt from filing with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d) shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) Limitations on Use of FINRA's Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication that complies with the applicable standards of this Rule and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security, and provided further that any reference to the Department's review of a communication is limited to either “Reviewed by FINRA” or “FINRA Reviewed”;

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the FINRA Uniform Practice Code"; and

(3) on a member's website, provided that the member provides a hyperlink to FINRA's internet home page, www.finra.org, in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its website. If the member's website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the public's attention to FINRA membership. This provision also shall apply to an internet website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence (“public appearance”), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that

these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of Rule 2241 or by a debt research analyst for purposes of Rule 2242 that includes all of the disclosures required by Rule 2241 or 2242, as applicable. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

(g) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications will be deemed a violation of this Rule 2210.

Amended by SR-FINRA-2016-021 eff. July 16, 2016.
Amended by SR-FINRA-2015-022 eff. June 6, 2016.
Amended by SR-FINRA-2015-050. eff. Dec. 24, 2015.
Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2008-044 eff. Feb. 5, 2009.
Amended by SR-FINRA-2007-020 eff. March 26, 2008.
Amended by SR-FINRA-2007-014 eff. Nov. 17, 2007.
Amended by SR-NASD-2006-073 eff. July 7, 2007.
Amended by SR-NASD-2007-042 eff. June 27, 2007 (Implementation date of IM-2210-4 (3) is Oct 31, 2007).
Amended by SR-NASD-2004-043 eff. April 1, 2007.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2004-123 eff. Aug. 10, 2004.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-2000-12 and SR-NASD-2003-94 eff. Nov. 3, 2003.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-98-32 eff. April 1, 2000.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Amended by SR-NASD-98-29 eff. Nov. 16, 1998.
Amended by SR-NASD-98-28 eff. July 15, 1998.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-33 eff. May 9, 1997.
Amended by SR-NASD-95-39 eff. Aug. 20, 1996.
Amended by SR-NASD-95-12 eff. Aug. 9, 1995.
Amended by SR-NASD-93-66 eff. Mar. 17, 1994.
Amended by SR-NASD-92-53 eff. July 1, 1993.
Amended eff. Aug. 2, 1983; June 5, 1987; July 1, 1988; Nov. 28, 1988; June 26, 1990; Mar. 27, 1991; Sept. 13, 1991; Nov. 16, 1992.

Selected Notices: 98-83, 99-16, 00-15, 00-22, 03-38, 04-36, 04-64, 06-48, 07-02, 07-47, 09-10, 12-29, 14-30, 15-50.

2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings

Past version: effective from Feb 4, 2013 - Jan 8, 2017.

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may use a bond mutual fund volatility rating only in a communication that is accompanied or preceded by a prospectus for the bond mutual fund ("supplemental sales literature") and only when the following requirements are satisfied:

(1) The rating does not identify or describe volatility as a "risk" rating.

(2) The supplemental sales literature incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.

(4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a website, or both.

(c) Disclosure Requirements

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2005-117 eff. Dec. 27, 2005.
Amended by SR-NASD-2005-104 eff. Aug. 31, 2005.
Amended by SR-NASD-2003-126 eff. Aug. 31, 2003.
Amended by SR-NASD-2001-49 eff. August 10, 2001.
Adopted by SR-NASD-97-89 eff. Feb. 29, 2000.

Selected Notices: 96-84, 00-17, 00-23, 12-29.

2214. Requirements for the Use of Investment Analysis Tools

Past version: effective from Jul 11, 2014 - Jan 8, 2017.

(a) General Considerations

This Rule provides a limited exception to Rule 2210(d)(1)(F). No member may imply that FINRA endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) must, within 10 business days of first use, (1) provide FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool and, (2) pursuant to Rule 2210(c)(3)(C), file with the Department any template for written reports produced by, or retail communications concerning, the tool.

(b) Definition

For purposes of this Rule and any interpretation thereof, an "investment analysis tool" is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and Retail Communications

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related retail communications only if the tool, written report or related retail communication:

(1) describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) explains that results may vary with each use and over time;

(3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written (which may be electronic) narrative form.

• • • Supplementary Material: ----------

.1 Relationship to Rule 2210(d)(1)(F). Rule 2210(d)(1)(F) states that "[c]ommunications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." This Rule allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

.2 Advertising Regulation Department Requests. A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

.3 Material Changes to Disclosures. After the Department has reviewed the investment analysis tool, written-report template, or retail communication, a member must notify the Department and provide additional access to the tool and re-file any template, or retail communication if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

.4 Investment Analysis Tools Used with Institutional Investors. A member that offers an investment analysis tool exclusively to "institutional investors," as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for "institutional communication," as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool or any related report with, any "retail investor," as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

.5 Compliance with Other Applicable Laws and Rules. As in all cases, a member's compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with FINRA's suitability rule (Rule 2111), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud provisions), the SEC rules (including, but not limited to, Securities Act Rule 156) and other FINRA rules.

.6 Incidental References to Investment Analysis Tools. A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210. A retail communication that refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool must provide the disclosures required by paragraphs (c)(2) and (c)(4), but may exclude the disclosures required by paragraphs (c)(1) and (c)(3).

.7 Investment Analysis Tools that Favor Certain Securities. The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Adopted by SR-NASD-2003-13 eff. Feb. 15, 2005.

Selected Notices: 04-86, 12-29, 14-30.

3110. Supervision (effective July 31, 2015 through April 2, 2017)

Supplementary Material .15 is effective from Apr 24, 2014 through Dec. 1 2015.

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by this Rule.

(2) The designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required.

(3) The registration and designation as a branch office or an office of supervisory jurisdiction (OSJ) of each location, including the main office, that meets the definitions contained in paragraph (f) of this Rule.

(4) The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member.

(5) The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities.

(6) The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.

(7) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(') or principal's(') place of business.

(b) Written Procedures

(1) **General Requirements**

Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

(2) **Review of Member's Investment Banking and Securities Business**

The supervisory procedures required by this paragraph (b) shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member.

(3) **Reserved.**

(4) **Review of Correspondence and Internal Communications**

The supervisory procedures required by this paragraph (b) shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business. The supervisory procedures must be appropriate for the

member's business, size, structure, and customers. The supervisory procedures must require the member's review of:

(A) incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA rules and federal securities laws.

(B) internal communications to properly identify those communications that are of a subject matter that require review under FINRA rules and federal securities laws.

Reviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper.

(5) **Review of Customer Complaints**

The supervisory procedures required by this paragraph (b) shall include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

(6) **Documentation and Supervision of Supervisory Personnel**

The supervisory procedures required by this paragraph (b) shall set forth the supervisory system established by the member pursuant to paragraph (a) above, and shall include:

(A) the titles, registration status, and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and FINRA rules.

(B) a record, preserved by the member for a period of not less than three years, the first two years in an easily accessible place, of the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

(C) procedures prohibiting associated persons who perform a supervisory function from:

(i) supervising their own activities; and

(ii) reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising.

a. If a member determines, with respect to any of its supervisory personnel, that compliance with subparagraph (i) or (ii) above is not possible because of the member's size or a supervisory personnel's position within the firm, the member must document:

1. the factors the member used to reach such determination; and

2. how the supervisory arrangement with respect to such supervisory personnel otherwise complies with paragraph (a) of this Rule.

(D) procedures reasonably designed to prevent the supervisory system required pursuant to paragraph (a) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised.

(7) **Maintenance of Written Supervisory Procedures**

A copy of a member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the member. Each member shall promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including FINRA rules, and as changes occur in its supervisory system. Each member is responsible for promptly communicating its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review shall be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each member shall also retain a written record of the date upon which each review and inspection is conducted.

(A) Each member shall inspect at least annually (on a calendar-year basis) every OSJ and any branch office that supervises one or more non-branch locations.

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the member shall consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done at the location, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. If a member establishes a more frequent inspection cycle, the member must ensure that at least every three years, the inspection requirements enumerated in paragraph (c)(2) have been met. The member's written supervisory and inspection procedures shall set forth the non-supervisory branch office examination cycle, an explanation of the factors the member used in determining the frequency of the examinations in the cycle, and the manner in which a member will comply with paragraph (c)(2) if using more frequent inspections than every three years.

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The member's written supervisory and inspection procedures shall set forth the schedule and an explanation regarding how the member determined the frequency of the examination.

(2) An inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written.

(A) If applicable to the location being inspected, that location's written inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(i) safeguarding of customer funds and securities;

(ii) maintaining books and records;

(iii) supervision of supervisory personnel;

(iv) transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts; from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks; and

(v) changes of customer account information, including address and investment objectives changes and validation of such changes.

(B) The policies and procedures required by paragraph (c)(2)(A)(iv) must include a means or method of customer confirmation, notification, or follow-up that can be documented. Members may use reasonable risk-based criteria to determine the authenticity of the transmittal instructions.

(C) The policies and procedures required by paragraph (c)(2)(A)(v) must include, for each change processed, a means or method of customer confirmation, notification, or follow-up that can be documented and that complies with SEA Rules 17a-3(a)(17)(i)(B)(2) and 17a-3(a)(17)(i)(B)(3).

(D) If a member does not engage in all of the activities enumerated in paragraphs (c)(2)(A)(i) through (c)(2)(A)(v) at the location being inspected, the member must identify those activities in the member's written supervisory procedures or the location's written inspection report and document in the member's written supervisory procedures or the location's written inspection report that supervisory policies and procedures for such activities must be in place at that location before the member can engage in them.

(3) For each inspection conducted pursuant to paragraph (c), a member must:

(A) have procedures reasonably designed to prevent the effectiveness of the inspections required pursuant to paragraph (c)(1) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the location being inspected, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and

(B) ensure that the person conducting an inspection pursuant to paragraph (c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.

(C) If a member determines that compliance with paragraph (c)(3)(B) is not possible either because of a member's size or its business model, the member must document in the inspection report both the factors the member used to make its determination and how the inspection otherwise complies with paragraph (c)(1).

(d) Transaction Review and Investigation

(1) Each member shall include in its supervisory procedures a process for the review of securities transactions that are reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive device that are effected for the:

(A) accounts of the member;

(B) accounts introduced or carried by the member in which a person associated with the member has a beneficial interest or the authority to make investment decisions;

(C) accounts of a person associated with the member that are disclosed to the member pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable; and

(D) covered accounts.

(2) Each member must conduct promptly an internal investigation into any such trade to determine whether a violation of those laws or rules has occurred.

(3) A member engaging in investment banking services must file with FINRA, written reports, signed by a senior officer of the member, at such times and, without limitation, including such content, as follows:

(A) within ten business days of the end of each calendar quarter, a written report describing each internal investigation initiated in the previous calendar quarter pursuant to paragraph (d)(2), including the identity of the member, the date each internal investigation commenced, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and, with respect to each internal investigation, the identity of the security, trades, accounts, associated persons of the member, or associated person of the member's family members holding a covered account, under review, and that includes a copy of the member's policies and procedures required by paragraph (d)(1).

(B) within five business days of completion of an internal investigation pursuant to paragraph (d)(2) in which it was determined that a violation of the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices had occurred, a written report detailing the completion of the investigation, including the results of the investigation,any internal disciplinary action taken, and any referral of the matter to FINRA, another self-regulatory organization, the SEC, or any other federal, state, or international regulatory authority.

(4) Definitions

For purposes of this Rule:

(A) The term "covered account" shall include any account introduced or carried by the member that is held by:

(i) the spouse of a person associated with the member;

(ii) a child of the person associated with the member or such person's spouse, provided that the child resides in the same household as or is financially dependent upon the person associated with the member;

(iii) any other related individual over whose account the person associated with the member has control; or

(iv) any other individual over whose account the associated person of the member has control and to whose financial support such person materially contributes.

(B) The term "investment banking services" shall include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(e) Responsibility of Member to Investigate Applicants for Registration

Each member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.

If the applicant previously has been registered with FINRA or another self-regulatory organization, the member shall review a copy of the applicant's most recent Form U5, including any amendments thereto, within 60 days of the filing

date of an application for registration, or demonstrate to FINRA that it has made reasonable efforts to do so. In conducting its review of the Form U5, the member shall take such action as may be deemed appropriate.

The member shall also review an applicant's employment experience to determine if the applicant has been recently employed by a Futures Commission Merchant or an Introducing Broker that is notice-registered with the SEC pursuant to Section 15(b)(11) of the Exchange Act. In such a case, the member shall also review a copy of the applicant's most recent CFTC Form 8-T, including any amendments thereto, within 60 days of the filing date of an application for registration, or demonstrate to FINRA that it has made reasonable efforts to do so. In conducting its review of a Form 8-T, the member shall take such action as may be deemed appropriate.

In addition, each member shall establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's initial or transfer Form U4 no later than 30 calendar days after the form is filed with FINRA. Such procedures shall, at a minimum, provide for a search of reasonably available public records to be conducted by the member, or a third-party service provider, to verify the accuracy and completeness of the information contained in the applicant's initial or transfer Form U4.

(f) Definitions

(1) "Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place:

(A) order execution or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds or securities;

(D) final acceptance (approval) of new accounts on behalf of the member;

(E) review and endorsement of customer orders, pursuant to paragraph (b)(2) above;

(F) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or

(G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

(2)

(A) A "branch office" is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(i) Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) Any location that is the associated person's primary residence; provided that

a. Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

b. The location is not held out to the public as an office and the associated person does not meet with customers at the location;

c. Neither customer funds nor securities are handled at that location;

d. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

e. The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

f. Electronic communications (e.g., e-mail) are made through the member's electronic system;

g. All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

h. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

i. A list of the residence locations is maintained by the member;

(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of subparagraphs (2)(A)(ii)a. through h. above;

(iv) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; *

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(C) The term "business day" as used in paragraph (e)(2)(A) of this Rule shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

• • • Supplementary Material: ----------

.1 Registration of Main Office

A member's main office location is required to be registered and designated as a branch office or OSJ if it meets the definitions of a "branch office" or "office of supervisory jurisdiction" as set forth in Rule 3110(e). In general, the nature of activities conducted at a main office will satisfy the requirements of such terms.

.2 Designation of Additional OSJs

In addition to the locations that meet the definition of OSJ in Rule 3110(e), each member shall also register and designate other offices as OSJs as is necessary to supervise its associated persons in accordance with the standards set forth in Rule 3110. In making a determination as to whether to designate a location as an OSJ, the member should consider the following factors:

(a) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(b) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(c) whether the location is geographically distant from another OSJ of the firm;

(d) whether the member's registered persons are geographically dispersed; and

(e) whether the securities activities at such location are diverse or complex.

.3 Supervision of Multiple OSJs by a Single Principal

Rule 3110(a)(4) requires a member to designate one or more appropriately registered principals in each OSJ with the authority to carry out the supervisory responsibilities assigned to that office ("on-site principal"). The designated on-site principal for each OSJ must have a physical presence, on a regular and routine basis, at each OSJ for which the principal has supervisory responsibilities. Consequently, there is a general presumption that a principal will not be designated and assigned to be the on-site principal pursuant to Rule 3110(a)(4) to supervise more than one OSJ. If a member determines it is necessary to designate and assign one appropriately registered principal to be the on-site principal pursuant to Rule 3110(a)(4) to supervise two or more OSJs, the member must take into consideration, among others, the following factors:

(a) whether the on-site principal is qualified by virtue of experience and training to supervise the activities and associated persons in each location;

(b) whether the on-site principal has the capacity and time to supervise the activities and associated persons in each location;

(c) whether the on-site principal is a producing registered representative;

(d) whether the OSJ locations are in sufficiently close proximity to ensure that the on-site principal is physically present at each location on a regular and routine basis; and

(e) the nature of activities at each location, including size and number of associated persons, scope of business activities, nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

The member must establish, maintain, and enforce written supervisory procedures regarding the supervision of all OSJs. In all cases where a member designates and assigns one on-site principal to supervise more than one OSJ, the member must document in the member's written supervisory and inspection procedures the factors used to determine why the member considers such supervisory structure to be reasonable and the determination by the member will be subject to scrutiny.

.4 Annual Compliance Meeting

A member is not required to conduct in-person meetings with each registered person or group of registered persons to comply with the annual compliance meeting (or interview) required by Rule 3110(a)(7). A member that chooses to conduct compliance meetings using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone, or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting (e.g., an on-demand annual compliance webcast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you go confirmation, and have an attestation of completion at the end of a webcast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (e.g., an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site).

.5 Risk-based Review of Member's Investment Banking and Securities Business

A member may use a risk-based review system to comply with Rule 3110(b)(2)'s requirement that a registered principal review, all transactions relating to the investment banking or securities business of the member. A member is not required to conduct detailed reviews of each transaction if a member is using a reasonably designed risk-based review system that provides a member with sufficient information that permits the member to focus on the areas that pose the greatest numbers and risks of violation.

.6 Risk-based Review of Correspondence and Internal Communications

By employing risk-based principles, a member must decide the extent to which additional policies and procedures for the review of:

(a) incoming and outgoing written (including electronic) correspondence that fall outside of the subject matters listed in Rule 3110(b)(4) are necessary for its business and structure. If a member's procedures do not require that all correspondence be reviewed before use or distribution, the procedures must provide for:

(1) the education and training of associated persons regarding the firm's procedures governing correspondence;

(2) the documentation of such education and training; and

(3) surveillance and follow-up to ensure that such procedures are implemented and followed.

(b) internal communications that are not of a subject matter that require review under FINRA rules and federal securities laws are necessary for its business and structure.

.7 Evidence of Review of Correspondence and Internal Communications

The evidence of review required in Rule 3110(b)(4) must be chronicled either electronically or on paper and must clearly identify the reviewer, the internal communication or correspondence that was reviewed, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review. Merely opening a communication is not sufficient review.

.8 Delegation of Correspondence and Internal Communication Review Functions

In the course of the supervision and review of correspondence and internal communications required by Rule 3110(b)(4), a supervisor/principal may delegate certain functions to persons who need not be registered. However, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews, irrespective of whether he or she delegates functions related to the review. Accordingly, supervisors/principals must take reasonable and appropriate action to ensure delegated functions are properly executed and should evidence performance of their procedures sufficiently to demonstrate overall supervisory control.

.9 Retention of Correspondence and Internal Communications

Each member shall retain the internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a-4(b). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records, and the retained records shall be readily available to FINRA, upon request.

.10 Supervision of Supervisory Personnel

A member's determination that it is not possible to comply with paragraphs (b)(6)(C)(i) or (b)(6)(C)(ii) of Rule 3110 prohibiting supervisory personnel from supervising their own activities and from reporting to, or otherwise having compensation or continued employment determined by, a person or persons they are supervising generally will arise in instances where:

(a) the member is a sole proprietor in a single-person firm;

(b) a registered person is the member's most senior executive officer (or similar position); or

(c) a registered person is one of several of the member's most senior executive officers (or similar positions).

.11 Use of Electronic Media to Communicate Written Supervisory Procedures

A member may use electronic media to satisfy its obligation to communicate its written supervisory procedures, and any amendment thereto, pursuant to Rule 3110(b)(7), provided that: (1) the written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom such supervisory procedures apply based on their activities and responsibilities through, for example, the member's intranet system; (2) all amendments to the written supervisory procedures are promptly posted to the member's electronic media; (3) associated persons are notified that amendments relevant to their activities and responsibilities have been made to the written supervisory procedures; (4) the member has reasonable procedures to monitor and maintain the security of the material posted to ensure that it cannot be altered by unauthorized persons; and (5) the member retains current and prior versions of its written supervisory procedures in compliance with the applicable record retention requirements of SEA Rule 17a-4(e)(7).

.12 Standards for Reasonable Review

In fulfilling its obligations under Rule 3110(c), each member must conduct a review, at least annually, of the businesses in which it engages. The review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with FINRA rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags"), etc. The procedures established and reviews conducted must provide that the quality of supervision at remote locations is sufficient to ensure compliance with applicable securities laws and regulations and with FINRA rules. A member must be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations.

.13 General Presumption of Three-Year Limit for Periodic Inspection Schedules

Rule 3110(c)(1)(C) requires a member to inspect on a regular periodic schedule every non-branch location. In establishing a non-branch location inspection schedule, there is a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., "red flags"). If a member establishes a longer periodic inspection schedule, the member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

.14 Exception to Persons Prohibited from Conducting Inspections

A member's determination that it is not possible to comply with Rule 3110(c)(3)(B) with respect to who is not allowed to conduct a location's inspection will generally arise in instances where:

(a) the member has only one office; or

(b) the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager.

.15 Temporary Program to Address Underreported Form U4 Information

FINRA is establishing a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M (unsatisfied judgments or liens) if the Form U4 amendment is filed between April 24, 2014 and December 1, 2015 and one of the following conditions is met: (1) the judgment or lien has been satisfied, and at the time it was unsatisfied, it was under $5,000 and the date the judgment or lien was filed with a court (as reported on Form U4 Judgment/Lien DRP, Question 4.A.) was on or before August 13, 2012; or (2) the unsatisfied judgment or lien was satisfied within 30 days after the individual learned of the judgment or lien (as reported on Form U4 Judgment/Lien DRP, Question 4.B.). This program has a retroactive effective date of April 24, 2014, and it will automatically sunset on December 1, 2015. Members will not be able to use the program after December 1, 2015.

* Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed "holding out" for purposes of this section.

Amended by SR-FINRA-2015-005 eff. July 31, 2015.
Amended by SR-FINRA-2014-038 eff. July 1, 2015.
Amended by SR-FINRA-2013-025 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-038 eff. April 24, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2007-008 eff. Dec. 19, 2007.
Amended by SR-NASD-2006-037 eff. July 3, 2006.
Amended by SR-NASD-2005-033 eff. Aug. 1, 2005.
Amended by SR-NASD-2005-004 eff. July 25, 2005
Amended by SR-NASD-2002-162 and SR-NASD-2004-116 eff. Jan. 31, 2005.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-2002-04 eff. Oct. 14, 2002.
Amended by SR-NASD-99-28 eff. Aug. 16, 1999.
Amended by SR-NASD-98-52 eff. March 15, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Amended by SR-NASD-97-69 eff. August 17, 1998.
Amended by SR-NASD-98-45 postponed eff. date of provision in Notice to Members 98-11.
Amended by SR-NASD-98-31 eff. Apr. 7, 1998, postponed eff. date of provision in Notice to Members.
Amended by SR-NASD-98-10 postponed eff. date.
Amended by SR-NASD-97-24 eff. Feb. 15, 1998.
Amended by SR-NASD-97-41 eff. Sept. 4, 1997.
Amended eff. June 12, 1989; Apr. 30, 1992.
Selected Notices to Members: 86-65, 88-84, 89-34, 89-57, 91-48, 92-18, 96-33, 96-59, 96-82, 98-11, 98-18, 98-38, 98-52, 98-96, 99-03, 99-45, 04-71, 05-67, 06-13, 07-64, 14-10.

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