

Attachment A

Attachment A shows the text of the proposed rule change. Proposed new language is underlined; deletions are in brackets.

* * * * *

FINRA RULES

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

2210. Communications with the Public

(a) No Change.

(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”).] 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 retail communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that retail communications comply with applicable standards. When such procedures do not require review of all retail 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 retail 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.

(B) The procedures in paragraph (b)(1)(A) must provide for an appropriately qualified registered principal of the member to review retail communications that are equity or debt research reports as described in Rules 2241(a)(11) and 2242(a)(3), respectively, before use.[The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to Rule 1220(a)(14) 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 procedures in paragraph (b)(1)(A) may provide that review of a retail communication prior to first use or distribution is not required[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] FINRA's Advertising Regulation Department ("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.]

(D[E]) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(B[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) through (4) No Change.

(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 a member first files a communication with the Department after 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) No Change.

[(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.]

(2[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 paragraph[s] (c)(1)[or (c)(2)].

(B) through (C) No Change.

(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 paragraph[s] (c)(1)[, (c)(2)] or subparagraphs (A) through (C) of paragraph (c)(2[3]).

(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.

(4) Requirement to Approve Communications Prior to Filing

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.

(5) through (6) No Change.

(7) Exclusions from Filing Requirements

The following communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(3[4]):

(A) through (L) No Change.

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

(N) through (P) No Change.

(8) No Change.

(9) Filing Exemptions

(A) No Change.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(2[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) through (6) No Change.

(7) Recommendations

(A) [Retail c] Communications may not include a reference to a past specific recommendation provided by the member or associated person where such recommendation is not presented in a manner that is fair and balanced.[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) through (9) No Change.

(e) through (g) No Change.

••• Supplementary Material: -----

.01 Review of Retail Communications. When establishing written procedures under Rule 2210(b)(1)(A), members should conduct a risk-based assessment including without limitation consideration of the following factors: (1) nature and complexity of products or services that the communication concerns, including the member’s or associated person’s familiarity with the product or service; (2) qualifications and experience of the preparer of the communication, including persons paid for or involved in the preparation of the content or who explicitly or implicitly endorsed or approved the content; (3) whether the communication makes a financial or investment recommendation or otherwise promotes

a product or service of the member; (4) whether the communication promotes a product or service offered through an affiliate of the member or another third party; (5) whether the communication appears to be tailored to a specific audience or individual; (6) the inclusion of performance data, rankings, or comparisons; (7) medium and distribution method for the communication; and (8) the member's or associated persons' history of communication concerns identified in member reviews or regulatory reviews as to particular products, services or methods.

* * * * *

2215. Communications with the Public Regarding Security Futures

(a) FINRA Filing Requirements

(1) [As set forth in paragraph (c)(2) of Rule 2210, a]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) No Change.

(b) through (e) No Change.

* * * * *