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May 23, 2014

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

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 14-14: Retrospective Rule Review – FINRA Requests Comment on the Effectiveness and Efficiency of its Communications with the Public Rules

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Communications with the Public Rules pursuant to Regulatory Notice 14-14. WFA commends FINRA's effort "to look back at its significant rulemaking to determine whether a FINRA rule or rule set is meeting its intended investor-protection objectives by reasonably efficient means." [1]

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.4 trillion in client assets. It employs approximately 15,146 full-service financial advisors in branch offices in all 50 states and 3,350 licensed financial specialists in retail bank branches across the country.[2]

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[1] FINRA Regulatory Notice 14-14 Retrospective Rule Review – FINRA Requests Comment on the Effectiveness and Efficiency of its Communications with the Public Rules.
http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p479810.pdf

[2]WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC ("WFAFN") and First Clearing, LLC, ("FCC"), which provides clearing services to 76 correspondent clients, WFA

As part of the retrospective rule review, FINRA asks for information regarding ambiguities or compliance challenges of the Communications with the Public Rules. WFA appreciates FINRA's efforts to provide guidance with respect to the 2013 Rule 2210 update and believes additional clarification would be helpful. WFA offers the comments below to illustrate the need for additional clarification and highlight some provisions of the rules which should be revaluated to enhance the efficiency of the rules.

I. FINRA should review and re-evaluate the filing requirements for communications with the public.

FINRA has several rules that require filing of certain types of communications within designated time periods, as noted in Rules 2210(c), 2213, 2214 and 2216. WFA believes FINRA should re-evaluate the necessity of all filing requirements based on the risk exposure of the items to be filed. For example, WFA feels the filing requirements in FINRA Rule 2214-*Requirements for the Use of Investment Analysis Tools* need to be re-evaluated. Specific filing requirements for investment analysis tools are burdensome and do not accurately reflect the tools' risk level when compared to complex products, such as collateralized mortgage obligations, which have similar filing requirements. Penny stocks and unregistered securities have no filing requirements at all.

II. FINRA should re-evaluate the prohibition against predictions or projections of performance.

FINRA Rule 2210(d)(1)(F) prohibits communications that predict or project performance. WFA believes this restriction is unduly burdensome and that FINRA should re-evaluate this prohibition. Financial projections play an important role in educating investors and allowing them to compare products, particularly when presented in a fair and balanced manner.

III. FINRA should clarify the requirements for firms to adhere to when an associate conducts a public appearance.

In FINRA Rule 2210(f)(3), FINRA explains the firm's public appearance procedures "must provide for the education and training of associated persons who make public appearances." WFA believes that additional guidance from FINRA would facilitate compliance with the education and training requirements. In particular, are there standard requirements which FINRA plans to audit to assess compliance with training and educational requirements of the rule? Does FINRA intend for the required training to be provided to <u>all</u> associates, or only those who conduct public appearances?

As noted above, Rule 2210(f)(3) requires education and training for "associated persons" making public appearances. WFA seeks clarification on what constitutes an "associated

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and WFAFN. For ease of discussion, this letter will use WFA to refer to all brokerage operations.

person" for purposes of the education and training requirements. In particular, are a firm's Home Office Team Members subject to the public appearance requirements? If a senior leader addressed an audience and discussed general industry topics, would they be subject to the training and educational requirements of the public appearances rule?

In addition, Rule 2210(f)(3) requires "surveillance and follow-up to ensure that such procedures are implemented and adhered to." Are there standard requirements which FINRA plans to audit for the "follow-up"?

IV. FINRA should clarify the rules on required disclosures for the recommendation of securities.

FINRA Rule 2210(d)(7)(A)(ii) requires that "a recommendation of securities must disclose, if applicable, that the firm or any associated person directly and materially involved in the preparation of the content has a financial interest in any of the securities of the issuer whose securities are recommended…" However, FINRA Notice To Members (NTM) 12-29: Communications with the Public notes that the rule "substantially narrows the number of parties whose financial interests have to be disclosed, particularly for large firms with numerous officers and partners."[3]

In light of this statement about the narrowing of the rule's application, WFA believes FINRA may have meant "associated person" to include "any officer or partner that was involved in the preparation of the content" rather than all associates of the firm. If the rule change is meant to capture "all associates," WFA seeks clarification as to the level of involvement that constitutes "materially involved with the preparation," prompting disclosure. For example, if a registered sales assistant assists in the creation of a piece that includes a recommendation but is signed by the financial advisor, would this potentially require disclosure from <u>both</u> the registered sales assistant and the financial advisor?

In addition, Rule 2210(d)(7)(A)(ii) states that this disclosure is not required if "the extent of the (member's/associated person's) financial interest is nominal." Does FINRA have a threshold or test for determining a "nominal interest"?

V. FINRA should clarify firms' supervisory responsibilities for internal communications.

FINRA NTM 12-29 states, "while FINRA Rule 2210 will not apply to a firm's internal communications once it becomes effective, firms still must supervise these communications, including a firm's internal communications that train or educate registered representatives."[4] In particular, supervisory procedures must be "reasonably designed to ensure" that training and education materials are "fair, balanced and accurate."[5]

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[3] FINRA Regulatory Notice 12-29: Communications with the Public. http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p127014.pdf
[4] *Id.* at 5.
[5] *Id.*

Do internal communications that are considered "sales ideas" (but not sales scripts) or internal collaboration sites where associates share ideas fall under the term "train or educate?"

VI. FINRA should clarify record retention requirements for internal communications.

FINRA NTM 12-29 states "[f]irms must determine the extent to which the review of internal communications is necessary in accordance with the supervision of their business and maintain records of all internal communications relating to their business as a broker-dealer."[6]

WFA believes the rule could be made clearer by discussing retention requirements in specific scenarios. For example, a non-brokerage affiliate posts a communication on a brokerage social media platform where all brokerage associates can view the communication. The communication is static (non-interactive format) and contains general retirement information.

In light of FINRA's statement that "communications relating to their business as a broker-dealer" must be retained, would the brokerage firm be responsible for retention of this communication?

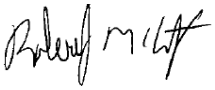
VII. FINRA should memorialize the exceptions from obtaining principal pre-use approval of certain retail communications.

As noted in FINRA NTM 12-29, any retail communication that is posted on an online interactive electronic forum does not require principal pre-use approval.[7] WFA believes that FINRA should add language to the existing rules to clarify that this exception also applies to the redistribution of interactive content, such as material that is "retweeted".

CONCLUSION

WFA appreciates the opportunity to comment on the Communications with the Public Rules, and commends FINRA's efforts to determine if the rules are meeting their intended objectives. WFA believes that FINRA could improve the clarity and efficiency of these rules by addressing the above outlined issues. Please feel free to contact me with any questions or comments.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy
Wells Fargo Advisors, LLC

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[6] *Id.*
[7] *Id.* at 7.

cc: Mr. Stephen Bard
Director of Communications Compliance
Wells Fargo Advisors, LLC