

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 36	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2014 - * 012	Amendment No. (req. for Amendments *)
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Filing by Financial Industry Regulatory Authority  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2214 (Requirements for the Use of Investment Analysis Tools)

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Philip	Last Name * Shaikun
Title * Vice President and Associate General Counsel	
E-mail * philip.shaikun@finra.org	
Telephone * (202) 728-8451	Fax (202) 728-8264


**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 03/10/2014	Senior Vice President and Deputy General Counsel
By Patrice Gliniecki	
(Name *)	



NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 2210 (Communications with the Public) to exclude from the filing requirements research reports concerning only securities listed on a national securities exchange, other than research reports which must be filed pursuant to Section 24(b) of the Investment Company Act of 1940 (“1940 Act”). FINRA also is proposing to amend FINRA Rule 2210 to clarify that free writing prospectuses that are exempt from filing with the SEC are not subject to the rule’s filing or content standards. Finally, FINRA is proposing to correct a mistaken rule cross-reference in FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

**3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

Filing Exclusion for Research Reports on Exchange-Listed Securities

FINRA is proposing to amend the current requirements for members to file certain retail communications with the Advertising Regulation Department (the “Department”). Under this amendment, members would no longer be required to file research reports that concern only securities listed on a national securities exchange. Between the dedicated protections applied to research reports by other FINRA and SEC rules and the increased liquidity and price transparency associated with exchange-listed securities, FINRA believes the additional investor protection benefit of Department review of those retail communications is minimal in relation to the cost of compliance and administration of the filing requirement. This proposed exemption would not apply to research reports that must be filed under Section 24(b) of the 1940 Act.

Background

On March 29, 2012, the Commission approved new FINRA Rule 2210 (Communications with the Public), which replaced NASD Rules 2210 and 2211 and certain Interpretive Materials that followed NASD Rule 2210 and became effective on February 4, 2013. Among other things, FINRA Rule 2210 contains two new filing requirements. Paragraph (c)(3)(A) of FINRA Rule 2210 requires for the first time that member firms file with the Department all retail communications concerning closed-end

investment companies<sup>2</sup> within 10 business days of first use. Previously, NASD Rule 2210 only required that member firms file advertisements and sales literature concerning a closed-end fund during the fund's initial public offering period.

FINRA Rule 2210(c)(3)(E) also requires for the first time that member firms file all retail communications concerning any security that is registered under the Securities Act of 1933 ("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. This filing requirement is intended to apply to retail communications concerning so-called "structured products," although the breadth of the provision could arguably include retail communications concerning securities not typically thought of as structured products, including registered investment companies, security futures, public direct participation programs, or collateralized mortgage obligations. FINRA notes that those retail communications are already subject to separate filing requirements, and thus member firms are not required to file these communications a second time under the structured product filing requirement.<sup>3</sup>

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<sup>2</sup> For purposes of FINRA Rule 2210, a "closed-end investment company" or "closed-end fund" refers to a registered "closed-end company" as defined in Section 5(a)(2) of the 1940 Act.

<sup>3</sup> See FINRA Rule 2210(c)(3)(A) through (D). The "structured product" filing requirement specifies that it does not apply to retail communications concerning these other products, since they are already covered by the filing requirements in FINRA Rule 2210(c)(1), (c)(2) and (c)(3)(A) through (D).

Filing Requirements for Research Reports

The Rule 2210 filing requirements apply to research reports<sup>4</sup> to the extent that they constitute retail communications about a product category that requires filing pursuant to the Rule (including the provisions of the Rule referenced above), or to the extent that they are covered by the new member filing requirements of FINRA Rule 2210(c)(1)(A).<sup>5</sup> Therefore, the filing requirements cover research reports concerning certain exchange-listed securities, such as exchange-listed master limited partnerships and registered closed-end funds, as well as research reports concerning any securities to the extent that they are covered by the new member filing requirements.

For the reasons discussed below, FINRA believes that it is appropriate to amend FINRA Rule 2210 to exempt research reports concerning only exchange-listed securities from the filing requirements, other than research reports that must be filed pursuant to Section 24(b) of the 1940 Act. Section 24(b) requires any registered open-end

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<sup>4</sup> Rule 2711(a)(9) defines “research report” as “any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.” The definition specifically excludes certain types of communications, such as discussions of broad-based indices or commentaries on economic, political or market conditions.

<sup>5</sup> Under paragraph (c)(1)(A) of FINRA Rule 2210, a new member must file with the Department at least 10 business days prior to use certain retail communications that are published or used in any electronic or public media. These retail communications include those published on any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, sign or billboard. A member is subject to this filing requirement for a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as of the date that FINRA membership became effective. A member may file a retail communication that is a free writing prospectus filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) within 10 business days of first use rather than at least 10 business days prior to first use.

investment company, any registered unit investment trust, or any registered face-amount certificate company, and any underwriter<sup>6</sup> for such companies, to file all advertisements, pamphlets, circulars, form letters and other sales literature addressed to or intended for distribution to prospective investors with the Commission within 10 days of distribution of such material.<sup>7</sup>

An important purpose of FINRA's filing requirements is to ensure that communications distributed or made available to investors are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security. FINRA staff review of these communications also helps ensure that they do not contain any material omissions that would cause the communication to be misleading, and do not contain any false, exaggerated, unwarranted, promissory or misleading statements or claims.

FINRA believes that the likelihood of investor harm resulting from the distribution of research reports concerning only exchange-listed securities is significantly lessened due to additional investor protection standards that apply to research reports but do not apply to other types of sales material. In particular, research reports are subject to the comprehensive disclosure, content and analyst independence requirements of NASD

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<sup>6</sup> The 1940 Act defines "underwriter" to include "any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking." The term excludes "a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission." See 1940 Act Section 2(a)(40).

<sup>7</sup> Pursuant to Rule 24b-3 under the 1940 Act, any sales material shall be deemed filed with the Commission for purposes of Section 24(b) upon filing with FINRA.

Rule 2711 and SEC Regulation Analyst Certification (“Regulation AC”). In addition, the fact that these securities are listed on a national securities exchange reduces the risk that a research report could manipulate a security’s trading price, since the ability to trade the security on an exchange provides both increased liquidity and a price discovery mechanism that does not exist for unlisted securities.

For example, if a research report contains a price target, NASD Rule 2711(h)(7) requires a member firm to disclose the valuation methods used to determine the price target, and firms must have a reasonable basis for the price target and must accompany it with a disclosure concerning the risks that may impede achievement of the price target. NASD Rule 2711(h) also requires numerous other conflicts of interest disclosures concerning such issues as individual and member holdings of the issuer’s securities, investment banking relationships with and receipt of compensation from the issuer, disclosure of the meanings and distribution of ratings assigned to issuers, inclusion of a price chart showing when the firm assigned or changed a rating or price target, and disclosure of market making activities.

Research analysts also must prepare equity research reports in a controlled environment that is designed to reduce the potential for conflicts of interest. For example, the rules generally prohibit persons not directly responsible for the preparation, content and distribution of research from reviewing or approving research reports prior to publication.<sup>8</sup> In addition, Rule 2711 imposes certain requirements concerning the compensation paid to research analysts that are intended to reduce conflicts of interest.<sup>9</sup>

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<sup>8</sup> See NASD Rule 2711(b).

<sup>9</sup> See NASD Rule 2711(d).



Regulation AC requires research analysts to provide certifications to research reports to help address the risk that research analysts may issue research reports that do not reflect their true beliefs or that communicate views that differ from views expressed to institutional investors.<sup>10</sup> These include a statement certifying that all of the views expressed in the report accurately reflect the analyst's personal views about any and all of the covered securities and issuer, and another statement certifying either (1) that no part of the analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the analyst in the research report or (2) that part or all of the analyst's compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report. If the analyst certifies to the second alternative, the statement must include the source, amount and purpose of such compensation and further must disclose that it may influence the recommendation in the research report.<sup>11</sup>

FINRA rules also require any person who is primarily responsible for the preparation of the substance of a research report, or whose name appears on a research report, to pass certain qualification examinations and register as a research analyst with FINRA. Pursuant to NASD Rule 1050, research analysts must be registered as a General Securities Representative under NASD Rule 1032, and must pass the qualification examinations for research analysts (Series 86 and 87).<sup>12</sup> In addition, research reports

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<sup>10</sup> See Securities Act Release No. 8193 (February 20, 2003), 68 FR 9482 (February 27, 2003).

<sup>11</sup> See 17 CFR 242.501(a).

<sup>12</sup> FINRA may grant a waiver from the analytical portion of the research analyst qualification examination (Series 86) upon verification that the applicant has passed other enumerated examinations. See NASD Rule 1050(c).

must be approved either by a Supervisory Analyst that has passed the Series 16 qualification examination, or a registered principal that has passed both the Series 24 and Series 87 qualification examinations.<sup>13</sup> Together with the pricing transparency and increased liquidity of exchange-listed securities generally, FINRA believes these additional investor protections eliminate the need to have research reports concerning exchange-listed securities subject to filing with FINRA, since it is significantly less likely that these communications will contain false and misleading information or omit important risk and conflicts disclosures.

FINRA believes that this filing exclusion is consistent with the approach that FINRA has taken for purposes of other parts of FINRA Rule 2210, such as the exclusion from the recommendation disclosure requirements of FINRA Rule 2210(d)(7) for research reports that include all of the disclosures required by Rule 2711.<sup>14</sup> Because FINRA concluded that Rule 2711's disclosure standards protect investors without the need for additional disclosure, FINRA exempted research reports from certain of Rule 2210's specific content standards. In the same manner, FINRA believes it is unnecessary to require reports on exchange-listed securities to be filed with FINRA because of the investor protections offered by Rule 2711 and Regulation AC.

FINRA also recognizes the importance of allowing members to publish research on exchange-listed securities in a timely manner. Research that is stale or untimely has far less value to investors than research that is up-to-date. Particularly for new members, which are required to file certain retail communications at least 10 business days prior to

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<sup>13</sup> See NASD Rule 1022(a)(5) and FINRA Rule 2210(b)(1)(B); see also Notice to Members 07-04 (January 2007).

<sup>14</sup> See FINRA Rule 2210(d)(7)(D)(i).

first use, the current filing requirements could impose an impediment to publishing timely research on exchange-listed securities.

The Department's staff generally has not seen significant problems with research reports that have been filed with FINRA. The filing requirements for new firms under FINRA Rule 2210(c)(1)(A) are intended to provide an extra level of FINRA staff review for firms that are just beginning their business operations. FINRA is not aware of any firms that, in the past, have produced research subject to filing under the new firm filing requirement. In addition, FINRA believes that the supervisory and certification requirements applicable to research reports decrease the likelihood that a new firm would experience the types of problems that may occur with respect to other retail communications. Accordingly, FINRA believes that exempting research reports on exchange-listed securities from the new firm filing requirement would be consistent with investor protection.

As for reports that have been filed pursuant to other filing requirements, such as the filing requirements for retail communications concerning closed-end funds, public direct participation programs, or structured products, the staff mostly has reviewed these reports for compliance with NASD Rule 2711's disclosure requirements. FINRA believes that it can better employ the Department's resources viewing other types of communications that present a greater risk of investor harm. To the extent a review of members' research reports on exchange-listed securities is necessary, FINRA believes that it can address this need through either its examination program, or conducting a spot check of members' reports.

The proposal would not include research reports that are subject to filing pursuant to Section 24(b) of the 1940 Act, or research concerning securities that are not listed on a national securities exchange, within the proposed filing exclusion. Because the 1940 Act separately requires certain communications concerning registered open-end companies, registered unit investment trusts, and registered face-amount certificate companies to be filed, FINRA does not believe it is appropriate to include research reports that fall within this filing requirement within this exclusion.

Securities that are not listed on a national securities exchange do not possess the same liquidity features and price discovery as exchange-listed securities, and thus at this time FINRA is not excluding research reports concerning such securities from filing. The increased liquidity and price discovery mechanisms for exchange-listed securities reduce the likelihood that a research report could mislead an investor as to the true value of a security.

In contrast, a report concerning an unlisted security has greater potential to mislead investors. For example, FINRA believes that there are greater risks of investor harm and price manipulation with respect to a research report on a master limited partnership that is not listed on a national securities exchange. Accordingly, FINRA believes that such reports should not be subject to the filing exclusion.

The proposed filing exclusion also would not apply to any retail communication concerning an exchange-listed security that is not a research report for purposes of NASD Rule 2711. Thus, for example, a member firm would still be required to file with FINRA a retail communication that is intended to promote the sale of the securities of an exchange-listed closed-end investment company or direct participation program if the

retail communication was not a research report for purposes of Rule 2711. Because the additional investor protections that apply to research reports do not apply to these retail communications, FINRA believes that it is appropriate to continue to require member firms to file these types of retail communications.

Clarification Regarding Free Writing Prospectuses Exempt from SEC Filing

The filing requirements and content standards of FINRA Rule 2210 do not apply to prospectuses and similar documents that have been filed with the SEC, other than investment company advertisements prepared pursuant to Securities Act Rule 482, and free-writing prospectuses that are used or referred to by a broker-dealer and distributed by or on behalf of the broker-dealer in a manner reasonably designed to lead to its broad unrestricted dissemination. FINRA Rule 2210(c)(7)(F) excludes from the rule's filing requirements "[p]rospectuses, 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, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion." Similarly, FINRA Rule 2210(d)(8) excludes from the rule's content standards "[p]rospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC," but provides that the content standards do apply to "an investment company prospectus pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii)."

Questions have been raised as to whether these exclusions cover a free writing prospectus that is exempt from filing with the SEC pursuant to Securities Act Rule 433. FINRA intended these exclusions to cover prospectuses filed with the SEC as well as free writing prospectuses that are exempt from filing, other than so-called “omitting prospectuses” of registered investment companies governed by Securities Act Rule 482, and free writing prospectuses required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii). Accordingly, a free writing prospectus that is exempt from filing with the SEC pursuant to Securities Act Rule 433 is not subject to the filing requirements and content standards of FINRA Rule 2210.<sup>15</sup> To clarify this intent, FINRA is proposing to amend FINRA Rule 2210(c)(7)(F) and FINRA Rule 2210(d)(8) specifically to exclude from the filing and content standards free writing prospectuses that are exempt from filing with the SEC. FINRA is also proposing to clarify that the filing and content requirements apply to free-writing prospectuses required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

Correction of Rule Cross-Reference in FINRA Rule 2214

Paragraph (a) of FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) mistakenly cross-references FINRA Rule 2210(c)(3)(D) (the filing requirement for retail communications concerning collateralized mortgage obligations).<sup>16</sup>

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<sup>15</sup> See Regulatory Notice 10-52 (October 2010) (FINRA communication rules “apply to free writing prospectuses distributed by a broker-dealer in a manner reasonably designed to lead to broad unrestricted dissemination”). FINRA Rule 2210’s filing and content standards are intended to apply to free writing prospectuses that are subject to filing with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), but not to other types of free writing prospectuses.

<sup>16</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035).

Rule 2214(a) should cross-reference Rule 2210(c)(3)(C) (the filing requirement for any template for written reports produced by, or retail communications concerning, an investment analysis tool). FINRA proposes to correct this rule cross-reference.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposal to exclude research reports concerning only exchange-listed securities from the filing requirements for certain retail communications is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed filing exclusion will reduce the burdens imposed on member firms that would otherwise have to file research reports on exchange-listed securities with FINRA, while continuing to protect investors through the protections provided by FINRA Rule 2210 and NASD Rules 1022, 1050 and 2711.

FINRA also believes that the proposed clarification regarding the application of Rule 2210's filing and content standards to free writing prospectuses that are exempt

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<sup>17</sup> 15 U.S.C. 78q-3(b)(6).

from filing with the SEC is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>18</sup> The proposal is consistent with FINRA's current interpretation of Rule 2210.

FINRA further believes that the proposed correction of the rule cross-reference in FINRA Rule 2214 is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>19</sup> The correction of the cross-reference is consistent with the Rule's intent and purpose and will reduce any potential confusion due to the current incorrect cross-reference.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would reduce burdens on members by relieving them of the obligation and expense of filing research reports that are currently subject to filing. The proposed rule change also would clarify for members the intended application of Rule 2210 to free writing prospectuses that are exempt from filing with the SEC, and would not add any burden on competition.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>20</sup>

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<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78s(b)(2).



7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2014-012)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2214 (Requirements for the Use of Investment Analysis Tools)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2210 (Communications with the Public) to exclude from the filing requirements research reports concerning only securities listed on a national securities exchange, other than research reports which must be filed pursuant to Section 24(b) of the Investment Company Act of 1940 (“1940 Act”). FINRA also is proposing to amend FINRA Rule 2210 to clarify that free writing prospectuses that are exempt from filing with the SEC are not subject to the rule’s filing

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

or content standards. Finally, FINRA is proposing to correct a mistaken rule cross-reference in FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Filing Exclusion for Research Reports on Exchange-Listed Securities

FINRA is proposing to amend the current requirements for members to file certain retail communications with the Advertising Regulation Department (the "Department"). Under this amendment, members would no longer be required to file research reports that concern only securities listed on a national securities exchange. Between the dedicated protections applied to research reports by other FINRA and SEC rules and the increased liquidity and price transparency associated with exchange-listed securities, FINRA believes the additional investor protection benefit of Department review of those retail communications is minimal in relation to the cost of compliance

and administration of the filing requirement. This proposed exemption would not apply to research reports that must be filed under Section 24(b) of the 1940 Act.

### Background

On March 29, 2012, the Commission approved new FINRA Rule 2210 (Communications with the Public), which replaced NASD Rules 2210 and 2211 and certain Interpretive Materials that followed NASD Rule 2210 and became effective on February 4, 2013. Among other things, FINRA Rule 2210 contains two new filing requirements. Paragraph (c)(3)(A) of FINRA Rule 2210 requires for the first time that member firms file with the Department all retail communications concerning closed-end investment companies<sup>3</sup> within 10 business days of first use. Previously, NASD Rule 2210 only required that member firms file advertisements and sales literature concerning a closed-end fund during the fund's initial public offering period.

FINRA Rule 2210(c)(3)(E) also requires for the first time that member firms file all retail communications concerning any security that is registered under the Securities Act of 1933 ("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. This filing requirement is intended to apply to retail communications concerning so-called "structured products," although the breadth of the provision could arguably include retail communications concerning securities not typically thought of as structured products, including registered investment companies, security futures, public direct participation programs, or collateralized mortgage obligations. FINRA notes that those retail

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<sup>3</sup> For purposes of FINRA Rule 2210, a "closed-end investment company" or "closed-end fund" refers to a registered "closed-end company" as defined in Section 5(a)(2) of the 1940 Act.

communications are already subject to separate filing requirements, and thus member firms are not required to file these communications a second time under the structured product filing requirement.<sup>4</sup>

#### Filing Requirements for Research Reports

The Rule 2210 filing requirements apply to research reports<sup>5</sup> to the extent that they constitute retail communications about a product category that requires filing pursuant to the Rule (including the provisions of the Rule referenced above), or to the extent that they are covered by the new member filing requirements of FINRA Rule 2210(c)(1)(A).<sup>6</sup> Therefore, the filing requirements cover research reports concerning certain exchange-listed securities, such as exchange-listed master limited partnerships

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<sup>4</sup> See FINRA Rule 2210(c)(3)(A) through (D). The “structured product” filing requirement specifies that it does not apply to retail communications concerning these other products, since they are already covered by the filing requirements in FINRA Rule 2210(c)(1), (c)(2) and (c)(3)(A) through (D).

<sup>5</sup> Rule 2711(a)(9) defines “research report” as “any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.” The definition specifically excludes certain types of communications, such as discussions of broad-based indices or commentaries on economic, political or market conditions.

<sup>6</sup> Under paragraph (c)(1)(A) of FINRA Rule 2210, a new member must file with the Department at least 10 business days prior to use certain retail communications that are published or used in any electronic or public media. These retail communications include those published on any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, sign or billboard. A member is subject to this filing requirement for a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as of the date that FINRA membership became effective. A member may file a retail communication that is a free writing prospectus filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) within 10 business days of first use rather than at least 10 business days prior to first use.

and registered closed-end funds, as well as research reports concerning any securities to the extent that they are covered by the new member filing requirements.

For the reasons discussed below, FINRA believes that it is appropriate to amend FINRA Rule 2210 to exempt research reports concerning only exchange-listed securities from the filing requirements, other than research reports that must be filed pursuant to Section 24(b) of the 1940 Act. Section 24(b) requires any registered open-end investment company, any registered unit investment trust, or any registered face-amount certificate company, and any underwriter<sup>7</sup> for such companies, to file all advertisements, pamphlets, circulars, form letters and other sales literature addressed to or intended for distribution to prospective investors with the Commission within 10 days of distribution of such material.<sup>8</sup>

An important purpose of FINRA's filing requirements is to ensure that communications distributed or made available to investors are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security. FINRA staff review of these communications also helps ensure that they do not contain any material omissions that

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<sup>7</sup> The 1940 Act defines "underwriter" to include "any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking." The term excludes "a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission." See 1940 Act Section 2(a)(40).

<sup>8</sup> Pursuant to Rule 24b-3 under the 1940 Act, any sales material shall be deemed filed with the Commission for purposes of Section 24(b) upon filing with FINRA.

would cause the communication to be misleading, and do not contain any false, exaggerated, unwarranted, promissory or misleading statements or claims.

FINRA believes that the likelihood of investor harm resulting from the distribution of research reports concerning only exchange-listed securities is significantly lessened due to additional investor protection standards that apply to research reports but do not apply to other types of sales material. In particular, research reports are subject to the comprehensive disclosure, content and analyst independence requirements of NASD Rule 2711 and SEC Regulation Analyst Certification (“Regulation AC”). In addition, the fact that these securities are listed on a national securities exchange reduces the risk that a research report could manipulate a security’s trading price, since the ability to trade the security on an exchange provides both increased liquidity and a price discovery mechanism that does not exist for unlisted securities.

For example, if a research report contains a price target, NASD Rule 2711(h)(7) requires a member firm to disclose the valuation methods used to determine the price target, and firms must have a reasonable basis for the price target and must accompany it with a disclosure concerning the risks that may impede achievement of the price target. NASD Rule 2711(h) also requires numerous other conflicts of interest disclosures concerning such issues as individual and member holdings of the issuer’s securities, investment banking relationships with and receipt of compensation from the issuer, disclosure of the meanings and distribution of ratings assigned to issuers, inclusion of a price chart showing when the firm assigned or changed a rating or price target, and disclosure of market making activities.

Research analysts also must prepare equity research reports in a controlled environment that is designed to reduce the potential for conflicts of interest. For example, the rules generally prohibit persons not directly responsible for the preparation, content and distribution of research from reviewing or approving research reports prior to publication.<sup>9</sup> In addition, Rule 2711 imposes certain requirements concerning the compensation paid to research analysts that are intended to reduce conflicts of interest.<sup>10</sup>

Regulation AC requires research analysts to provide certifications to research reports to help address the risk that research analysts may issue research reports that do not reflect their true beliefs or that communicate views that differ from views expressed to institutional investors.<sup>11</sup> These include a statement certifying that all of the views expressed in the report accurately reflect the analyst's personal views about any and all of the covered securities and issuer, and another statement certifying either (1) that no part of the analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the analyst in the research report or (2) that part or all of the analyst's compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report. If the analyst certifies to the second alternative, the statement must include the source, amount and purpose of such compensation and further must disclose that it may influence the recommendation in the research report.<sup>12</sup>

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<sup>9</sup> See NASD Rule 2711(b).

<sup>10</sup> See NASD Rule 2711(d).

<sup>11</sup> See Securities Act Release No. 8193 (February 20, 2003), 68 FR 9482 (February 27, 2003).

<sup>12</sup> See 17 CFR 242.501(a).



FINRA rules also require any person who is primarily responsible for the preparation of the substance of a research report, or whose name appears on a research report, to pass certain qualification examinations and register as a research analyst with FINRA. Pursuant to NASD Rule 1050, research analysts must be registered as a General Securities Representative under NASD Rule 1032, and must pass the qualification examinations for research analysts (Series 86 and 87).<sup>13</sup> In addition, research reports must be approved either by a Supervisory Analyst that has passed the Series 16 qualification examination, or a registered principal that has passed both the Series 24 and Series 87 qualification examinations.<sup>14</sup> Together with the pricing transparency and increased liquidity of exchange-listed securities generally, FINRA believes these additional investor protections eliminate the need to have research reports concerning exchange-listed securities subject to filing with FINRA, since it is significantly less likely that these communications will contain false and misleading information or omit important risk and conflicts disclosures.

FINRA believes that this filing exclusion is consistent with the approach that FINRA has taken for purposes of other parts of FINRA Rule 2210, such as the exclusion from the recommendation disclosure requirements of FINRA Rule 2210(d)(7) for research reports that include all of the disclosures required by Rule 2711.<sup>15</sup> Because FINRA concluded that Rule 2711's disclosure standards protect investors without the

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<sup>13</sup> FINRA may grant a waiver from the analytical portion of the research analyst qualification examination (Series 86) upon verification that the applicant has passed other enumerated examinations. See NASD Rule 1050(c).

<sup>14</sup> See NASD Rule 1022(a)(5) and FINRA Rule 2210(b)(1)(B); see also Notice to Members 07-04 (January 2007).

<sup>15</sup> See FINRA Rule 2210(d)(7)(D)(i).

need for additional disclosure, FINRA exempted research reports from certain of Rule 2210's specific content standards. In the same manner, FINRA believes it is unnecessary to require reports on exchange-listed securities to be filed with FINRA because of the investor protections offered by Rule 2711 and Regulation AC.

FINRA also recognizes the importance of allowing members to publish research on exchange-listed securities in a timely manner. Research that is stale or untimely has far less value to investors than research that is up-to-date. Particularly for new members, which are required to file certain retail communications at least 10 business days prior to first use, the current filing requirements could impose an impediment to publishing timely research on exchange-listed securities.

The Department's staff generally has not seen significant problems with research reports that have been filed with FINRA. The filing requirements for new firms under FINRA Rule 2210(c)(1)(A) are intended to provide an extra level of FINRA staff review for firms that are just beginning their business operations. FINRA is not aware of any firms that, in the past, have produced research subject to filing under the new firm filing requirement. In addition, FINRA believes that the supervisory and certification requirements applicable to research reports decrease the likelihood that a new firm would experience the types of problems that may occur with respect to other retail communications. Accordingly, FINRA believes that exempting research reports on exchange-listed securities from the new firm filing requirement would be consistent with investor protection.

As for reports that have been filed pursuant to other filing requirements, such as the filing requirements for retail communications concerning closed-end funds, public

direct participation programs, or structured products, the staff mostly has reviewed these reports for compliance with NASD Rule 2711's disclosure requirements. FINRA believes that it can better employ the Department's resources viewing other types of communications that present a greater risk of investor harm. To the extent a review of members' research reports on exchange-listed securities is necessary, FINRA believes that it can address this need through either its examination program, or conducting a spot check of members' reports.

The proposal would not include research reports that are subject to filing pursuant to Section 24(b) of the 1940 Act, or research concerning securities that are not listed on a national securities exchange, within the proposed filing exclusion. Because the 1940 Act separately requires certain communications concerning registered open-end companies, registered unit investment trusts, and registered face-amount certificate companies to be filed, FINRA does not believe it is appropriate to include research reports that fall within this filing requirement within this exclusion.

Securities that are not listed on a national securities exchange do not possess the same liquidity features and price discovery as exchange-listed securities, and thus at this time FINRA is not excluding research reports concerning such securities from filing. The increased liquidity and price discovery mechanisms for exchange-listed securities reduce the likelihood that a research report could mislead an investor as to the true value of a security.

In contrast, a report concerning an unlisted security has greater potential to mislead investors. For example, FINRA believes that there are greater risks of investor harm and price manipulation with respect to a research report on a master limited

partnership that is not listed on a national securities exchange. Accordingly, FINRA believes that such reports should not be subject to the filing exclusion.

The proposed filing exclusion also would not apply to any retail communication concerning an exchange-listed security that is not a research report for purposes of NASD Rule 2711. Thus, for example, a member firm would still be required to file with FINRA a retail communication that is intended to promote the sale of the securities of an exchange-listed closed-end investment company or direct participation program if the retail communication was not a research report for purposes of Rule 2711. Because the additional investor protections that apply to research reports do not apply to these retail communications, FINRA believes that it is appropriate to continue to require member firms to file these types of retail communications.

Clarification Regarding Free Writing Prospectuses Exempt from SEC Filing

The filing requirements and content standards of FINRA Rule 2210 do not apply to prospectuses and similar documents that have been filed with the SEC, other than investment company advertisements prepared pursuant to Securities Act Rule 482, and free-writing prospectuses that are used or referred to by a broker-dealer and distributed by or on behalf of the broker-dealer in a manner reasonably designed to lead to its broad unrestricted dissemination. FINRA Rule 2210(c)(7)(F) excludes from the rule's filing requirements "[p]rospectuses, 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, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for

purposes of this exclusion.” Similarly, FINRA Rule 2210(d)(8) excludes from the rule’s content standards “[p]rospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC,” but provides that the content standards do apply to “an investment company prospectus pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).”

Questions have been raised as to whether these exclusions cover a free writing prospectus that is exempt from filing with the SEC pursuant to Securities Act Rule 433. FINRA intended these exclusions to cover prospectuses filed with the SEC as well as free writing prospectuses that are exempt from filing, other than so-called “omitting prospectuses” of registered investment companies governed by Securities Act Rule 482, and free writing prospectuses required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii). Accordingly, a free writing prospectus that is exempt from filing with the SEC pursuant to Securities Act Rule 433 is not subject to the filing requirements and content standards of FINRA Rule 2210.<sup>16</sup> To clarify this intent, FINRA is proposing to amend FINRA Rule 2210(c)(7)(F) and FINRA Rule 2210(d)(8) specifically to exclude from the filing and content standards free writing prospectuses that are exempt from filing with the SEC. FINRA is also proposing to clarify that the filing and content requirements apply to free-writing prospectuses required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

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<sup>16</sup> See Regulatory Notice 10-52 (October 2010) (FINRA communication rules “apply to free writing prospectuses distributed by a broker-dealer in a manner reasonably designed to lead to broad unrestricted dissemination”). FINRA Rule 2210’s filing and content standards are intended to apply to free writing prospectuses that are subject to filing with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), but not to other types of free writing prospectuses.

Correction of Rule Cross-Reference in FINRA Rule 2214

Paragraph (a) of FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) mistakenly cross-references FINRA Rule 2210(c)(3)(D) (the filing requirement for retail communications concerning collateralized mortgage obligations).<sup>17</sup> Rule 2214(a) should cross-reference Rule 2210(c)(3)(C) (the filing requirement for any template for written reports produced by, or retail communications concerning, an investment analysis tool). FINRA proposes to correct this rule cross-reference.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposal to exclude research reports concerning only exchange-listed securities from the filing requirements for certain retail communications is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed filing exclusion will reduce the burdens imposed on member firms that would otherwise have to file research reports on exchange-listed securities with FINRA, while continuing

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<sup>17</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035).

<sup>18</sup> 15 U.S.C. 78q-3(b)(6).

to protect investors through the protections provided by FINRA Rule 2210 and NASD Rules 1022, 1050 and 2711.

FINRA also believes that the proposed clarification regarding the application of Rule 2210's filing and content standards to free writing prospectuses that are exempt from filing with the SEC is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>19</sup> The proposal is consistent with FINRA's current interpretation of Rule 2210.

FINRA further believes that the proposed correction of the rule cross-reference in FINRA Rule 2214 is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>20</sup> The correction of the cross-reference is consistent with the Rule's intent and purpose and will reduce any potential confusion due to the current incorrect cross-reference.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would reduce burdens on members by relieving them of the obligation and expense of filing research reports that are currently subject to filing. The proposed rule change also would clarify for members the intended application of Rule 2210 to free writing prospectuses that are exempt from filing with the SEC, and would not add any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-012. This file number should be included on the subject line if e-mail is used. To help the Commission process



and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2014-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Elizabeth M. Murphy  
Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

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**2200. COMMUNICATIONS AND DISCLOSURES**

**2210. Communications with the Public**

(a) through (b) No Change.

**(c) Filing Requirements and Review Procedures**

(1) through (6) No Change.

(7) Exclusions from Filing Requirements

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

(A) through (E) No Change.

(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 [has been]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) through (N) No Change.

(O) Research reports as defined in NASD Rule 2711 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) through (9) No Change.

**(d) Content Standards**

(1) through (7) No Change.

(8) 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 [has been] is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) through (g) No Change.

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**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, 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)(D)] 2210(c)(3)(C), file with the Department any template for written reports produced by, or retail communications concerning, the tool.

(b) through (d) No Change.

••• **Supplementary Material:** -----

.01 through .07 No Change.