

# Public Investors Arbitration Bar Association

August 23, 2011

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Ms. Elizabeth Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-FINRA-2011-035 - Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2210 (Communications with the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications with the Public Regarding Security Futures), and 2216 (Communications with the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook

Dear Ms. Murphy:

Thank you for the opportunity to comment on the above-referenced proposal to amend NASD Rules 2210 and 2211 regarding communications with the public. I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA mostly supports the proposed revisions to these rules.

PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in FINRA rules relating to the communications between brokerage firms and the general investing public.

First, the proposed rules generally appear to be same as the current rules with respect to the requirement that an appropriately qualified registered principal of the firm approve the newly defined "retail communications" before use or filing with FINRA. PIABA supports the continuation of these rules.

When FINRA first proposed changing some of these rules, PIABA raised a concern about Proposed Rule 2210(b)(1)(D), which previously stated that principal approval would not be needed for communications that are "solely administrative in nature." However,

FINRA changed the Proposed Rule. The newest version of Proposed Rule 2210(b)(1)(D) has eliminated the “solely administrative in nature” language and instead now excludes principal review for “any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member”. PIABA believes this language invites differing interpretations as to which communications would be subject to review. We believe the “solely administrative in nature” language is superior.

PIABA also supports the proposed rules which provide record-keeping requirements that mirror those of Securities Exchange Act Rule 17a-4. The proposed filing requirements generally appear to be the same as the current rules, with one main difference – the filing requirements apply to all retail communications, not just advertisements as under the current scheme. Proposed rule 2210(c)(2) also expands the category of communications that fall within the pre-use filing requirements, including self-created rankings, retail communications regarding CMOs and security futures, communications regarding bond mutual fund volatility ratings, and communications concerning derivatives and structured products. PIABA supports this change.

Another major change involves retail communications related to closed-end investment companies and funds. The proposed rule requires firms to file all retail communications concerning closed-end funds within 10 days of use, including those used after the IPO (the current rules only apply to communications used during the IPO). Again, PIABA supports this change.

The content standards for communications are similar to current standards. PIABA supports the continued use of these standards.

One area where FINRA is requiring less disclosure involves interested partners, officers, and firms. Under the current rules, a firm would be required to provide disclosure if the firm, officers, or partners have a financial interest in the securities of the recommended issuer. However, the proposed rules only requires disclosure “if the firm or any associated person with the ability to influence the substance of the communication has a financial interest in the recommended issuer.”

PIABA raised concerns about this proposed change in its previous letter and continues to have those same concerns. This proposal would substantially narrow the number of parties whose financial interests have to be disclosed. Less disclosure is always a concern for the public investor, and PIABA hopes that FINRA will consider a proposed rule that provides for greater disclosure.

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With the few exceptions as noted above, PIABA supports most of the rule changes that have been proposed concerning communications with investors. Once more, we appreciate the opportunity to comment on these proposed rule changes.

Respectfully submitted,  
PUBLIC INVESTORS ARBITRATION  
BAR ASSOCIATION



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President

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