

# ADVISORS EXCEL COMPLIANCE

## FINRA RULE 2210 – Communications with the Public

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### • Introduction •

In 2012, the Securities Exchange Commission (SEC) adopted Rule 2210, established by the Financial Industry Regulatory Authority, Incorporated (FINRA). Rule 2210 requires firms registered with the National Association of Securities Dealers to adhere to the requirements of the NASD regarding approval, review and recordkeeping of promotional material and sets the standard for permissible and prohibited communications with the public.

### • FINRA Rule 2210(a) - Definitions •

FINRA Rule 2210(a) defines six terms to provide guidance on what constitutes communications with the public. For purposes of this Rule and any interpretation thereof:

1. **Communications** consist of correspondence, retail communications and institutional communications.
2. **Correspondence** means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.
3. **Institutional communication** means any written (including electronic) communication that is distributed or made available only to institutional investors, but *does not include* a member's internal communications.
4. **Institutional investor** means any:
  - (A) Person described in **Rule 4512(c)**, regardless of whether the person has an account with a member;
  - (B) Governmental entity or subdivision thereof;
  - (C) Employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of **Section 403(b)** or **Section 457** of the Internal Revenue Code (IRC) and in the aggregate have at least 100 participants, but does not include any participant of such plans;
  - (D) Qualified plan, as defined in **Section 3(a)(12)(C)** of the Securities Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the

aggregate have at least 100 participants, but does not include any participant of such plans;

- (E) Member or registered person of such a member; and
- (F) Person acting solely on behalf of any such institutional investor.

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

- 5. **Retail communication** means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.
- 6. **Retail investor** means any person other than an institutional investor, regardless of whether the person has an account with a member.

## Summary

Rule 2210(a) (1)-(6) provides definitions regarding language in the Rule that may require further clarity for interpretation.

### • FINRA Rule 2210(b) – Approval, Review and Recordkeeping •

#### 1. Retail Communications

**(A) Financial advisors must have ALL retail communications approved by their broker-dealer before disseminating the communication or before filing with FINRA’s Advertising Regulation Department (Department).**

- I. A member does not have to file with the Department if another member has filed a retail communication with the Department and has received a letter stating it meets FINRA’s standards. Further, the member who has not yet filed may not materially alter the approved communication and must use it in a manner consistent with the conditions required in the Department’s approval letter.<sup>1</sup>

**(B) The filing requirements stated in 22(b)(1)(A) may be met by filing with a Supervisory Analyst if the retail communication filed is one of the following:**

- I. Research reports on debt and equity securities;<sup>2</sup>
- II. Discussions of broad-based indices;<sup>3</sup>
- III. Commentaries on economic, political or market conditions;<sup>4</sup>
- IV. Technical analyses concerning supply and demand for a sector, index or industry based on trading volume and price;<sup>5</sup>
- V. Recommendations regarding increasing or decreasing holding in particular industries or sectors;<sup>6</sup> or

<sup>1</sup> FINRA Rule 2210(b)(1)(C).

<sup>2</sup> FINRA Rule 2210(b)(1)(B).

<sup>3</sup> NASD Rule 2711(a)(9)(A)(i)-(vi).

<sup>4</sup> Id.

<sup>5</sup> Id.

- VI. Notices of ratings or price target changes<sup>7</sup>
  - a. Members must simultaneously direct readers of the notice to the most recent research report on the subject company. Notices must also include the following disclosures:<sup>8</sup>
    - 1. Meaning of ratings;
    - 2. Distribution of ratings;
    - 3. Price chart; and
    - 4. Price targets
- VII. Research not included in the definition of “research report” as long as that Supervisory Analyst has technical experience in the particular product area.
- VIII. A Supervisory Analyst MAY NOT approve a retail communication that requires a separate registration if he or she does not also have that other registration.

**(C) Provided the member supervises and reviews the following retail communications pursuant to NASD Rule 3010(d), the following are not required to be submitted to the member’s principal prior to distribution or filing with the Department:**

- I. Any communication mentioned in section 1(B)(ii)-(vi) above UNLESS the retail communication makes any financial or investment recommendation;
- II. Any retail communication posted in 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) FINRA may grant filing exemptions, either unconditionally or conditionally, pursuant to the 9600 Series for good cause shown after considering all relevant factors and taking into account the public’s interest and the protection of investors.**

**2. Correspondence – All correspondence is subject to the supervision and review requirements of FINRA Rule 3110.**

**3. Institutional Communications**

**(A) Each member shall establish written procedures for institutional communications appropriate to its:**

- I. Business;
- II. Size;
- III. Structure; and
- IV. Customers

**(B) Written procedures must be reviewed by reviewed by the member’s principal and must be reasonably designed to comply with applicable Department rules governing member communications.**

**(C) Procedures that do not require review of institutional communications prior to distribution need to have a provision for education and training regarding the firm’s institutional communications as well as documentation of the education and training, and shall follow-up to ensure the procedures are followed.**

**(D) Members need to document and maintain evidence that supervisory procedures have been implemented so they can be provided to FINRA upon request.**

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**Comment [1]:** Replaced and consolidated in FINRA Rule 3110

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**Comment [2]:** Breakdown of FINRA Rules 9600 Series

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**Comment [3]:** Draft breakdown of FINRA Rule 3110 for Appendix

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> NASD Rule 2711(h)(4)-(7).

#### 4. Recordkeeping

(A) Every member, broker and dealer must retain the records listed below for a period of three years, two of which must be in an easily accessible location<sup>9</sup>:

- I. Ledgers that reflect the following<sup>10</sup>:
  - a. Securities in transfer;
  - b. Dividends and interest received;
  - c. Securities borrowed and securities loaned;
  - d. Money borrowed and loaned with a record of the collateral and any substitutions in the collateral;
  - e. Securities failed to receive and failed to deliver;
  - f. All long and short securities record differences that arise from the examination, count, verification and comparison pursuant to [17 CFR §§240.17a-5, 240.17a-12 and 240.17a-13](#)
    1. The records should indicate date of examination, count, verification and a comparison showing the number of long or short count differences for each security; and
  - g. Repurchase and reverse purchase agreements
- II. Any brokerage order memo<sup>11</sup> and any other instruction<sup>12</sup> for the purchase or sale of securities. It does not matter if the memo or instruction was given or received or whether it was executed or unexecuted. The memo must show the following.<sup>13</sup>
  - a. Terms and conditions of the order or instructions including any modification or cancellation;
  - b. Account for which it was entered;
  - c. Time the order was received;
  - d. Time of entry;
    1. The time of entry is the time when the member, broker or dealer transmits the order or instruction for execution.
  - e. Price at which the order was executed;
  - f. Identity of each person, if any, responsible for the account;
  - g. Identity of any other person who entered or accepted the order on behalf of the customer;
    1. Note that the memo only needs to show the associated person responsible for the account and not the identity of any person who may have entered or accepted the order if it is entered into an electronic system that generates the memo if that system is only capable of receiving an entry of the responsible associated person.
    2. If the electronic system is only capable of receiving an entry of the responsible associated person and a representative of a securities regulatory authority requests a separate record identifying the person a

<sup>9</sup> SEA Rule 17a-4(b).

<sup>10</sup> CFR § 240.17a-3(a)(4).

<sup>11</sup> If the member, broker or dealer maintains a copy of the customer's subscription agreement regarding a purchase or a copy of any other document required by the issuer regarding a sale or redemption the memo does not need to be made as to the purchase, sale or redemption of the security on a subscription way basis directly to or from the issuer. CFR § 240.17a-3(a)(6)(ii).

<sup>12</sup> The term instruction includes instructions between partners and employees of a member, broker or dealer.

<sup>13</sup> CFR § 240.17a-3(a)(6)(i).

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**Comment [4]:** Draft breakdown of these sections.

- member, broker or dealer must produce a separate record identifying that person.
- h. A notation of any entry on an electronic system entered by a customer; and
  - i. Time of execution or cancellation to the extent feasible
  - j. If an order is entered pursuant to the exercise of discretionary authority by the member, broker, dealer or associated person it must be designated as such.
- III. A memo showing the price and time of execution (to the extent feasible) of each purchase and sale for the account of the member, broker or dealer.<sup>14</sup>
- IV. Memos of each order received regarding purchases or sales with a customer other than a broker or dealer must show the:<sup>15</sup>
- a. Time of receipt;
  - b. Terms and conditions of the order including any modifications to the order;
  - c. Account for which the purchase was entered;
  - d. Identity of each person, if any, responsible for the account;
    - 1. Note that the memo only needs to show the associated person responsible for the account and not the identity of any person who may have entered or accepted the order if it is entered into an electronic system that generates the memo if that system is only capable of receiving an entry of the responsible associated person.
    - 2. If the electronic system is only capable of receiving an entry of the responsible associated person and a representative of a securities regulatory authority requests a separate record identifying the person a member, broker or dealer must produce a separate record identifying that person.
  - e. Identity of any other person who entered or accepted the order on behalf of the customer;
    - 1. If a customer entered an order on an electronic system a notation of the order entered must be made.
  - f. If an order is entered pursuant to the exercise of discretionary authority by the member, broker, dealer or associated person it must be designated as such.
- V. Copies of confirmations of all purchases and sales of securities, including:<sup>16</sup>
- a. All repurchase and reverse repurchase agreements; and
  - b. Notices of the following:
    - 1. Debits and credits for securities;
    - 2. Cash and other items for the account of customers and partners of the member, broker or dealer.
- VI. Each cash and margin account with the member, broker or dealer which indicates:<sup>17</sup>
- a. The name and address of the beneficial owner of the account to the extent that such securities are held by employee benefit plans established by the issuer of the securities;

<sup>14</sup> CFR § 240.17a-3(a)(7).

<sup>15</sup> Id.

<sup>16</sup> CFR § 240.17a-3(a)(8).

<sup>17</sup> CFR § 240.17a-3(a)(9).

1. It does not matter if the beneficial owner of the securities registered in the name of the member, broker or dealer, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers.
  2. Exempt from this rule are any employee benefit plan securities defined in § 240.14a-1(d).
- b. Regarding margin accounts, the signature of the owner of the account shall be recorded.<sup>18</sup>
- VII. When any member, broker or dealer has any direct or indirect interest or has granted or guaranteed an identification of the security and number of units involved, the following shall be recorded:<sup>19</sup>
- a. Puts;
  - b. Calls;
  - c. Spreads;
  - d. Straddles;
  - e. Other options
- VIII. An OTC derivatives dealer shall keep a record of all eligible OTC derivative instruments as defined in § 240.3b-13 when the OTC derivatives dealer has any of the following:<sup>20</sup>
- a. Direct or indirect interest;
  - b. Any written or guaranteed identification of the:
    1. Security or other instrument;
    2. Number of units involved; and
    3. Counterparty
- IX. Regarding internal broker-dealer systems where the broker or dealer is the sponsor, the following shall be recorded:<sup>21</sup>
- a. Any broker's or dealer's customers that have access to an internal broker-dealer system sponsored by the broker or dealer that identifies any affiliations between the broker or dealer and his or her customers.
  - b. Daily summaries of trading in the internal broker-dealer system, including:
    1. Securities for which transactions have been executed through the use of the internal system; and
    2. Transaction volume<sup>22</sup> with respect to:
      - A. Equity securities stated in number of trades, shares and total U.S. dollar value;
      - B. Debt securities stated in total settlement value in U.S. dollars; and
      - C. Other securities stated in number of trades, units of securities and in dollar value or other appropriate commonly used measure of value of such securities; and
  - c. Time-sequenced records of each transaction effected through the internal broker-dealer system, including:

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**Comment [5]:** Draft a breakdown of this for appendix.

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**Comment [6]:** Draft a breakdown of this for appendix.

<sup>18</sup> In the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for the account.

<sup>19</sup> CFR § 240.17a-3(a)(10).

<sup>20</sup> Id.

<sup>21</sup> CFR § 240.17a-3(a)(16).

<sup>22</sup> Transaction volume should be separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation.

1. Date and time executed;
  2. Price;
  3. Size;
  4. Security traded;
  5. Counterparty identification information; and
  6. Method of execution<sup>23</sup>
- d. Definitions relevant to internal broker-dealer systems:
1. Internal broker-dealer system shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in CFR §§ 242.300 – 242.303 that provides an automated mechanism<sup>24</sup> that:
    - A. Collects, receives, disseminates or displays system orders; and
    - B. Facilitates agreements to the basic terms of a purchase or sale of a security;
    - C. Between a customer and the sponsor; or
    - D. Between two customers of the sponsor; and
    - E. Is through the use of the internal broker-dealer system; or
    - F. Is through the broker or dealer sponsor of the internal system.
  2. Sponsor shall mean any broker-dealer that:
    - A. Organizes, operates, administers or otherwise directly controls an internal broker-dealer trading system; or
    - B. If the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that is involved on a regular basis with executing transactions in connection with use of the internal broker-dealer system<sup>25</sup> other than:
      - I. Solely for its own account; or
      - II. As a customer with access to the internal broker-dealer system.
  3. System order<sup>26</sup> means any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a security.
- X. A record<sup>27</sup>:
- a. Of each customer complaint received by a member, broker or dealer concerning that person. The record shall include the<sup>28</sup>:
    1. Complainant's name, address and account number;
    2. Date the complaint was received;

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**Comment [7]:** Break these definitions down in appendix.

<sup>23</sup> The method of execution shall be recorded only if the internal broker-dealer system allows alternative means or locations for execution such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system.

<sup>24</sup> Mechanism may be either partially or fully automated.

<sup>25</sup> Pursuant to contract, affiliation, or other agreement with the system operator.

<sup>26</sup> The term "system order" does not include inquiries or indications of interest that are not entered into the internal broker-dealer system.

<sup>27</sup> Instead of the record, a member, broker or dealer may maintain a copy of each original complaint in a separate file by the associated named in the complaint along with a record of the disposition of the complaint.

<sup>28</sup> CFR § 240.17a-3(a)(18)(i).

3. Name of any other associated person identified in the complaint;
  4. Description of the nature of the complaint; and
  5. Disposition of the complaint.
- b. The record shall indicate that each customer of the member, broker or dealer has been provided with a notice containing the:<sup>29</sup>
1. Address;
  2. Telephone number; and
  3. Department of the member, broker or dealer to which any complaints as to the account may be directed.
- XI. A record<sup>30,31</sup>
- a. As to each associated person listing each purchase and sale of a security attributable to that associated person. This record is used for compensation purposes; including
    1. The amount of compensation if monetary; and
    2. A description of the compensation if non-monetary.
  - b. Of all agreements relevant to the relationship between each associated person and the member, broker or dealer.
    1. The record of the agreement shall include a summary of each associated person's compensation arrangement or plan with the member, broker or dealer, commission and concession schedules.
    2. To the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.
- XII. A record<sup>32</sup> documenting that the member, broker or dealer has complied with or adopted policies and procedures reasonably designed to establish compliance with applicable federal requirements and rules of any self-regulatory organization of which the member, broker or dealer is affiliated (which require his or her principal's of advertisements, sales literature or any other communications with the public).<sup>33</sup>
- XIII. For each of his or her offices, every member, broker or dealer shall make and keep current the books, and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of CFR §240.17a-3.<sup>34</sup>
- (B) Records must include the following:**<sup>35</sup>
- I. A copy of the communication and the dates of first and last use of such communication;
  - II. The name of any registered principal who approved the communication and the date that approval was given;

<sup>29</sup> CFR § 240.17a-3(a)(18)(ii).

<sup>30</sup> Alternatively, a member, broker or dealer may elect to produce the required information promptly upon request of a representative of a securities regulatory authority.

<sup>31</sup> CFR § 240.17a-3(a)(19).

<sup>32</sup> The record does not need to be separate from the distributed advertisements, sales literature or communications.

<sup>33</sup> CFR § 240.17a-3(a)(20).

<sup>34</sup> CFR § 240.17a-3(g).

<sup>35</sup> FINRA Rule 2210(b)(4).

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**Comment [8]:** Break these down in appendix.



- III. In the case of a retail communication or institutional communication that was not approved by a registered principal prior to first use, the name of the person who prepared or distributed the communication;
- IV. Information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- V. The name of the member that filed the retail communication with the Department and a copy of the corresponding review letter from the Department are required for the following:<sup>36</sup>
  - a. Communications already filed with the Department by another member and that have been considered consistent with applicable standards by the Department; and
  - b. Communications that have not been materially altered by the member and will be used in a manner consistent with the conditions of the Department's letter.

**(C) Members must maintain books and records for which there is no specified period under the FINRA rules or applicable Securities Exchange Act rules for at least six years.<sup>37</sup>**

• FINRA Rule 2210(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<sup>38</sup>, members must file any retail communication with the Department intended to be published or used in any electronic or other public media at least ten business days prior to first use.<sup>39</sup>**

- I. Electronic and other public media includes any:<sup>40</sup>
  - a. Generally accessible website;
  - b. Newspaper;
  - c. Magazine;
  - d. Periodical;
  - e. Radio;
  - f. Television;
  - g. Telephone or audio recording;
  - h. Video display;
  - i. Signs or billboards;
  - j. Motion pictures; or
  - k. Telephone directories (other than routine listings).
- II. 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, the member may file such retail communication *within* ten business days of the first use rather than at least ten business days *prior* to first use.<sup>41</sup>

<sup>36</sup> FINRA Rule 2210(b)(1)(C).

<sup>37</sup> FINRA Rule 4511(b).

<sup>38</sup> Beginning on the date reflected in the Central Registration Depository (CRD®) as the date that FINRA membership became effective.

<sup>39</sup> FINRA Rule 4511(c)(1)(A).

<sup>40</sup> Id.

<sup>41</sup> Id.

- a. A free writing prospectus is any written communication that constitutes an offer to sell or a solicitation of an offer to buy the securities relating to a registered offering that is used after the registration statement in respect of the offering is filed.<sup>42</sup>
- b. Please note: A communication that is a radio or television broadcast is a written communication regardless of the means of transmission of the broadcast.<sup>43</sup>

**(B) If the Department determines that a member has departed from the standards of this Rule, it may require that the member file all communications, or the portion of communications that is related to any specific types or classes of securities or services with them at least ten business days prior to first use.**<sup>44, 45</sup>

- I. If the Department determines a member's communications require further pre-approval the member will be notified in writing of the types of communications to be filed and the length of time the member will be required to file.<sup>46</sup>
- II. Any filing requirement imposed on a member will take effect 21 calendar days after service of the written notice. During that time the member can request a hearing to determine if there is good cause for repealing the filing requirement imposed on him or her.<sup>47</sup>

## 2. Requirement to File Certain Retail Communications Prior to First Use

**(A) Members must file the following communications at least ten business days prior to first use or publication:**<sup>48</sup>

- I. Retail communications concerning registered investment companies, including:
  - a. Mutual funds;
  - b. Exchange-traded funds;
  - c. Variable insurance products;
  - d. Closed-end funds; and
  - e. Unit investment trusts; that
    - 1. Include or incorporate performance rankings and/or comparisons of the investment company with other investment companies; when
    - 2. The ranking or comparison category is not generally published; or
    - 3. The ranking or comparison category is directly or indirectly the creation of the investment company, its underwriter or an affiliate.<sup>49</sup>

**(B) Retail Communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not apply to:**<sup>50</sup>

- 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.

<sup>42</sup> CFR § 230.405.

<sup>43</sup> Id.

<sup>44</sup> FINRA Rule 4511(c)(1)(B).

<sup>45</sup> This provision may require members to submit retail communications to the Department for a period longer than one year.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> FINRA Rule 4511(c)(2).

<sup>49</sup> Filings must include a copy of the data on which the ranking or comparison is based.

<sup>50</sup> FINRA Rule 2210(c)(2)(B).

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**Comment [9]:** There are no requirements listed in this paragraph. Is this perhaps a typo and the authors meant (c)(2)(A)? But then why would they say the requirements of THIS paragraph?

- III. Retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings.<sup>51, 52</sup>

**(C) Retail communications concerning bond mutual funds that include or incorporate mutual fund volatility ratings.**

- I. A bond mutual fund volatility rating is defined as:<sup>53</sup>
  - a. A description issued by an independent third party,
  - b. Relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and
  - c. Is based on an evaluation of objective factors, including the:
    - 1. Credit quality of the fund's individual portfolio holdings,
    - 2. Market price volatility of the portfolio,
    - 3. Fund's performance, and
    - 4. Specific risks, including
      - I. Interest rate risk,
      - II. Prepayment risk, and
      - III. Currency risk

**3. Requirement to File Certain Retail Communications**

**(A) A member must file the following communications within 10 business days of the first use or publication:**

- I. Retail communications concerning registered investment companies not included within the requirements of paragraphs (c)(1) or (c)(2). The requirements of those paragraphs can be found on pages nine and ten of this summary. These communications include the following:<sup>54</sup>
  - a. Mutual funds,
  - b. Closed-end funds, and
  - c. Unit investment trusts
- II. Retail communications that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies must also include a copy of the ranking or comparison used in the retail communication filed.<sup>55</sup>
- III. Retail communications concerning public direct participation programs as defined in Rule 2310.<sup>56</sup>
- IV. Any template for written reports produced by, or retail communications concerning, an investment analysis tool.<sup>57</sup>

<sup>51</sup> FINRA Rule 2210 (c)(2)(C).

<sup>52</sup> Bond mutual fund volatility means a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy. The independent third-party description is must be based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk and currency risk.

<sup>53</sup> FINRA Rule 2213(a).

<sup>54</sup> FINRA Rule 2210(c)(3)(A).

<sup>55</sup> Id.

<sup>56</sup> FINRA Rule 2210(c)(3)(B).

<sup>57</sup> FINRA Rule 2210(c)(3)(C).

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**Comment [10]:** Add summary of FINRA Rule 2310 to Appendix

- a. An Investment Analysis Tool is defined as:<sup>58</sup>
  - 1. An interactive technological tool,
  - 2. That produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken,
  - 3. That serves as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.
- V. Retail communications concerning collateralized mortgage obligations registered under the Securities Act.<sup>59</sup>
- VI. Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a/an:<sup>60</sup>
  - a. Single security,
  - b. Basket of securities,
  - c. Index,
  - d. Commodity,
  - e. Debt issuance, or
  - f. Foreign currency

#### 4. Filing of Television or Video Retail Communications

- (A) 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.<sup>61</sup>**

#### 5. Date of First Use and Approval Information

- (A) A member must provide with each filing, the:<sup>62</sup>**
- I. Name,
  - II. Title and Central Registration Depository number of the registered principal who approved the retail communication, and
  - III. Date approval was given.

#### 6. Spot-Check Procedures

- (A) Each member’s written (including electronic) communications may be subject to a spot-check.<sup>63</sup>**
- (B) Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified in the request from the Department.<sup>64</sup>**

#### 7. Exclusions from Filing Requirements

- (A) The following communications are exempt from filing certain retail communications prior to first use.<sup>65</sup>**

<sup>58</sup> FINRA Rule 2214(b).

<sup>59</sup> FINRA Rule 2210(c)(3)(D).

<sup>60</sup> FINRA Rule 2210(c)(3)(E).

<sup>61</sup> FINRA Rule 2210(c)(4).

<sup>62</sup> FINRA Rule 2210(c)(5).

<sup>63</sup> FINRA Rule 2210(c)(6).

<sup>64</sup> Id.

<sup>65</sup> FINRA Rule 2210(c)(7)

- I. Retail communications that previously have been filed with the Department and that are to be used without material change.
- II. Retail communications that are based on templates that were previously filed with the Department where any changes are limited to updates providing more recent statistical or other non-narrative information.
- III. Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.
- IV. Retail communications that do no more than identify the member or offer a specific security at a stated price.
- V. Prospectuses<sup>66</sup>,<sup>67</sup>
- VI. Preliminary prospectuses,
- VII. Fund profiles,
- VIII. Offering circulars, and similar documents that have been filed with the SEC or any state, or that is exempt from such registration.
- IX. Announcements as a matter of record that a member has participated in a private placement, UNLESS the retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.
- X. Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended.
- XI. Press releases that are made available only to members of the media.
- XII. Correspondence and institutional communications.
- XIII. Communications that refer to types of investments solely as part of a listing of products or services offered by that member.
- XIV. Retail communications that are posted on an online interactive forum.
- XV. Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual.
- XVI. Any reprint or excerpt of any article or report issued by a publisher, provided that:
  - a. The publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;
  - b. Neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and
  - c. The member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

Ashley Wright 6/17/15 10:20 AM  
**Comment [11]:** Add breakdown of Securities Act Rules 482 to appendix

Ashley Wright 6/17/15 10:40 AM  
**Comment [12]:** Add Securities Act Section 2(a)(10)(b) to appendix

Ashley Wright 6/17/15 11:11 AM  
**Comment [13]:** Add to appendix

Ashley Wright 6/17/15 12:32 PM  
**Comment [14]:** Add to appendix

**8. Communications Deemed Filed with FINRA**

**(A) Investment company communications described in paragraphs 7(A)(XI), 7(A)(XII) and 7(A)(XVI) above shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act.<sup>68</sup>**

<sup>66</sup> Investment company prospectuses published pursuant to Securities Act Rule 482 are not considered prospectuses for purposes of this exclusion. FINRA Rule 2210(c)(7)(F).

<sup>67</sup> Also excluded are free writing prospectuses filed with the SEC, that are used or referred to and distributed by any offering participant in a manner reasonably designed to lead to its broad unrestricted dissemination. Securities Act Rule 433(d)(1)(ii).

<sup>68</sup> FINRA Rule 2210(c)(8).

## 9. Filing Exemptions

**(A) FINRA may exempt a member from the 10 day pre-use filing requirements of the following for good cause shown:<sup>69, 70</sup>**

- I. Generally accessible website;
- II. Newspaper;
- III. Magazine;
- IV. Periodical;
- V. Radio;
- VI. Television;
- VII. Telephone or audio recording;
- VIII. Video display;
- IX. Signs or billboards;
- X. Motion pictures; or
- XI. Telephone directories (other than routine listings).

**(B) FINRA may conditionally or unconditionally grant an exemption from the requirement of filing certain retail communications (Section three, pages 11 and 12 of this summary) 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.<sup>71</sup>**

• FINRA Rule 2210(d) – Content Standards •

<sup>69</sup> FINRA Rule 2210(c)(9)(A).

<sup>70</sup> FINRA Rule 2210(c)(1)(A).

<sup>71</sup> FINRA Rule 2210(c)(9)(B).