

## VIA ELECTRONIC MAIL

July 2, 2015

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

### **Re: Regulatory Notice 15-16: Communications With the Public**

Ms. Asquith:

On May 18, 2015 the Financial Industry Regulatory Authority (FINRA) published Regulatory Notice 15-16, a request for comment on proposed amendments to the FINRA rules governing Communications with the Public (Proposed Amendments).<sup>1</sup> The Notice follows a December 2014 report published by FINRA concluding that, while the rules have met their intended investor protection objections, they could benefit from some updating to better align investor protection benefits and economic impacts.<sup>2</sup> The report was based on meetings with members and comments received in response to Regulatory Notice 14-14, published April 8, 2014, a retrospective rule review seeking comment on FINRA's Communications with the Public rules to assess their effectiveness and efficiency.<sup>3</sup>

The Financial Services Institute<sup>4</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds FINRA's utilization of economic impact assessment and cost-benefit analysis to improve proposed and existing rules. Retrospective rule review is vital to increasing the transparency and accountability of SRO rulemaking, and will ensure that FINRA's rules remain relevant and are appropriately designed to achieve their objectives. The Proposed Amendments will reduce regulatory filing expenses while maintaining robust investor protections, and demonstrate a strong commitment by FINRA to balance these important goals. FSI supports the Proposed Amendments, and looks forward to providing feedback on future changes to the content standards of FINRA's Communications with the Public rules.<sup>5</sup>

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<sup>1</sup> FINRA Regulatory Notice 15-16 (May 2015); available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Note\\_15-16.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-16.pdf).

<sup>2</sup> FINRA Retrospective Rule Review Report: Communications with the Public (December 2014); available at <https://www.finra.org/sites/default/files/p602011.pdf>.

<sup>3</sup> FINRA Regulatory Notice 14-14 (April 2014); available at <http://www.finra.org/sites/default/files/NoticeDocument/p479810.pdf>.

<sup>4</sup> The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

<sup>5</sup> See RN 15-16 note 4 at p.8 ("Stakeholders commenting on the retrospective rule review also recommended that FINRA revise Rule 2210's content standards to address other issues, such as the amount of disclosure required in

### Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.<sup>6</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>7</sup> Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

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communications with the public, the standards applicable to the presentation of performance, and the standards governing online, mobile and social media communications. FINRA is considering whether to propose additional changes to Rule 2210 in response to these comments.”)

<sup>6</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>7</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

## Comments

FSI appreciates the opportunity to submit comments on the Proposed Amendments. FSI's comment letter in response to Regulatory Notice 14-14 highlighted several areas where the Communications with the Public rules could be improved. The Proposed Amendments address some of these concerns while simultaneously ensuring that FINRA's regulatory requirements balance efficiency with robust investor protection. FSI supports these changes, and encourages FINRA to continue pursuing changes to other areas of the Communications with the Public rules, including the content standards in FINRA Rule 2210(d).

## Request for Comment:

- 1. In addition to the economic impacts identified in this proposal, are there other significant sources of impacts, including direct or indirect costs and benefits, of the proposed amendments? What are these economic impacts and what factors contribute to them? Please provide data or other supporting evidence.**
  - FSI believes that FINRA has correctly and thoroughly identified the most significant costs and benefits associated with the Proposed Amendments. A particularly important benefit identified by FINRA is the benefit the amendments will have for investors. By reducing the cost of filing educational material regarding clients' investment options, the firms and financial advisors will be able to more efficiently make these materials available to investors.
- 2. Do firms anticipate altering the delivery method or content of their communications material as a result of the proposed amendments? If so, how would the firms alter their communications with the public?**
  - While the Proposed Amendments will reduce the costs associated with providing important retail communications to investors, challenges remain relating to certain areas of the Communications with the Public rules, such as the content standards under FINRA Rule 2210(d). FSI looks forward to providing input on proposed changes to these rules.
- 3. Are there other alternative approaches FINRA should consider to accomplish the goals described in this proposal? If so, what are those alternatives and why are they better suited?**
  - FSI supports the approaches advanced in the Proposed Amendments, which seek to address inefficiencies with the current Communications with the Public rules. FSI also appreciates the concurrent release of additional guidance published in Regulatory Notice 15-17. The Proposed Amendments and additional guidance will help clarify ambiguities and address inefficiencies in the application of these rules.
- 4. Will firms continue to file communications voluntarily? What is an estimate of the amount of materials that might continue to be filed voluntarily? Why might firms continue to file materials that would be exempt from filing under this proposal?**
  - Members will continue to file communications with FINRA voluntarily in instances where the retail communication could be considered to "promote or recommend a specific registered investment company or family of registered investment companies." As firms create policies and marketing materials that incorporate the Proposed Amendments, firms are likely to reduce voluntary filing of materials in instances where the language in the Proposed Amendments clearly indicate that the materials are exempted from filing requirements.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.  
Executive Vice President & General Counsel