

# 2210. Communications with the Public

## **(a) Definitions**

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 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 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.

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.

(7) "Covered investment fund research report" has the meaning given that term in paragraph (c)(3) of Securities Act Rule 139b.

## **(b) Approval, Review and Recordkeeping**

### **(1) Retail Communications**

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to Rule 1220(a)(14) with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rules 3110(b) and 3110.06 through .09:

(i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 2241(a)(11)(A) or "debt research report" under Rule 2242(a)(3)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on 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.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) 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.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

## **(2) Correspondence**

All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

## **(3) Institutional Communications**

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

## **(4) Recordkeeping**

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, 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;

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department; and

(vi) for any retail communication that includes or incorporates a performance ranking or performance comparison of a registered investment company, a copy of the ranking or performance used in the retail communication.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of Rules 3110.09 and 4511.

### **(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 beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). 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 pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to

first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

## **(2) Requirement to File Certain Retail Communications Prior to First Use**

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(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.

## **(3) Requirement to File Certain Retail Communications**

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2).

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(D) Retail communications concerning any security that is registered under the 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, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (C) of paragraph (c)(3).

#### **(4) Filing of Television or Video Retail Communications**

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.

#### **(5) Date of First Use and Approval Information**

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

#### **(6) Spot-Check Procedures**

In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

#### **(7) Exclusions from Filing Requirements**

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

(A) Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to:

(i) updates of more recent statistical or other non-narrative information; and

(ii) non-predictive narrative information that describes market events during the period covered by the communication or factual changes in portfolio composition or is sourced from a registered investment company's regulatory documents filed with the SEC.

(C) Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D) Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E) Retail communications that do no more than identify the member or offer a specific security at a stated price.

(F) Prospectuses, preliminary prospectuses, fund profiles, offering circulars, annual or semi-annual reports and similar documents that have been filed with the SEC or any state in compliance with applicable requirements, similar offering documents concerning securities offerings that are exempt from SEC and state registration requirements, 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 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) Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended, or any rule thereunder, such



as Rule 134, and 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.

(H) Press releases that are made available only to members of the media.

(I) Any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that:

(i) 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;

(ii) 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

(iii) 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.

(J) Correspondence.

(K) Institutional communications.

(L) Communications that refer to types of investments solely as part of a listing of products or services offered by the member.

(M) Retail communications that are posted on an online interactive electronic forum.

(N) 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 (or any successor provision).

(O) Research reports as defined in Rule 2241 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.

(P) Any covered investment fund research report that is deemed for the purposes of sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security under Securities Act Rule 139b.

#### **(8) Communications Deemed Filed with FINRA**

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

#### **(9) Filing Exemptions**

(A) Pursuant to the Rule 9600 Series, FINRA may exempt a member from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) 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.

#### **(d) Content Standards**

##### **(1) General Standards**

(A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

## **(2) Comparisons**

Any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

## **(3) Disclosure of Member's Name**

All retail communications and correspondence must:

(A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3) does not apply to so-called "blind" advertisements used to recruit personnel.

## **(4) Tax Considerations**

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

#### **(5) Disclosure of Fees, Expenses and Standardized Performance**

(A) Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of distribution or submission for publication of a communication; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

## **(6) Testimonials**

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

## **(7) Recommendations**

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:



(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

(D)(i) This paragraph (d)(7) does not apply to any communication that meets the definition of "research report" for purposes of Rule 2241 or that meets the definition of "debt research report" for purposes of Rule 2242, and includes all of the disclosures required by Rule 2241 or 2242, as applicable.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

## **(8) BrokerCheck**

(A) Each of a member's websites must include a readily apparent reference and hyperlink to BrokerCheck on:

(i) the initial webpage that the member intends to be viewed by retail investors; and

(ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors.

(B) The requirements of subparagraph (A) shall not apply to:

(i) a member that does not provide products or services to retail investors; and

(ii) a directory or list of registered persons limited to names and contact information.

### **(9) 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 is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

### **(e) Limitations on Use of FINRA's Name and Any Other Corporate Name Owned by FINRA**

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication that complies with the applicable standards of this Rule and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security, and provided further that any reference to the Department's review of a communication is limited to either "Reviewed by FINRA" or "FINRA Reviewed";

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the FINRA Uniform Practice Code"; and

(3) on a member's website, provided that the member provides a hyperlink to FINRA's internet home page, [www.finra.org](http://www.finra.org), in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its website. If the member's website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the

public's attention to FINRA membership. This provision also shall apply to an internet website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

**(f) Public Appearances**

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence ("public appearance"), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of Rule 2241 or by a debt research analyst for purposes of Rule 2242 that includes all of the disclosures required by Rule 2241 or 2242, as applicable. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

**(g) Violation of Other Rules**

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications will be deemed a violation of this Rule 2210.

# 2212. Use of Investment Companies Rankings in Retail Communications

## **(a) Definition of "Ranking Entity"**

For purposes of this Rule, the term "Ranking Entity" refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

## **(b) General Prohibition**

Members may not use investment company rankings in any retail communication other than (1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also must conform to the following requirements.

## **(c) Required Disclosures**

### **(1) Headlines/Prominent Statements**

A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category.

### **(2) Required Prominent Disclosure**

All retail communications containing an investment company ranking must disclose prominently:

(A) the name of the category (e.g., growth);

(B) the number of investment companies or, if applicable, investment company families, in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;

(D) the length of the period (or the first day of the period) and its ending date; and

(E) criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

### **(3) Other Required Disclosure**

All retail communications containing an investment company ranking also must disclose:

(A) the fact that past performance is no guarantee of future results;

(B) for investment companies that assess front-end sales loads, whether the ranking takes those loads into account;

(C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 2011"); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

### **(d) Time Periods**

#### **(1) Current Rankings**

Any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

#### **(2) Rankings Time Periods; Use of Yield Rankings**

Except for money market mutual funds:

(A) retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).

#### **(e) Categories**

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a published category or subcategory created by a Ranking Entity or (B) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

#### **(f) Multiple Class/Two-Tier Funds**

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

#### **(g) Investment Company Families**

Retail communications may contain rankings of investment company families, provided that these rankings comply with this Rule, and further provided that no retail

communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this Rule, the term "investment company family" means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

(h) Independently Prepared Reprints

This Rule shall not apply to any reprint or excerpt of any article or report that is excluded from the FINRA Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).



# 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 provide FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool upon request.

## **(b) Definition**

For purposes of this Rule and any interpretation thereof, an "investment analysis tool" is an interactive technological tool 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, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

## **(c) Use of Investment Analysis Tools and Related Written Reports and Retail Communications**

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related retail communications only if the tool, written report or related retail communication:

(1) describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) explains that results may vary with each use and over time;

(3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

## **(d) Disclosures**

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written (which may be electronic) narrative form.

### **Supplementary Material: -----**

**.01 Relationship to Rule 2210(d)(1)(F).** Rule 2210(d)(1)(F) states that “[communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Rule allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

**.02 Advertising Regulation Department Requests.** A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

**.03 Investment Analysis Tools Used with Institutional Investors.** A member that offers an investment analysis tool exclusively to “institutional investors,” as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for “institutional communication,” as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool or any related report with, any “retail investor,” as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

**.04 Compliance with Other Applicable Laws and Rules.** As in all cases, a member's compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with FINRA's suitability rule (Rule 2111), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud

provisions), the SEC rules (including, but not limited to, Securities Act Rule 156) and other FINRA rules.

**.05 Incidental References to Investment Analysis Tools.** A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210. A retail communication that refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool must provide the disclosures required by paragraphs (c)(2) and (c)(4), but may exclude the disclosures required by paragraphs (c)(1) and (c)(3).

**.06 Investment Analysis Tools that Favor Certain Securities.** The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

# 2216. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

## **(a) Definition**

For purposes of this Rule, the term "collateralized mortgage obligation" (CMO) refers to a multi-class debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.

## **(b) Disclosure Standards and Required Educational Material**

### **(1) Disclosure Standards**

All retail communications and correspondence concerning CMOs:

(A) must include within the name of the product the term "Collateralized Mortgage Obligation";

(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;

(C) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and

(D) must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

### **(2) Required Educational Material**

Before the sale of a CMO to any person other than an institutional investor, as defined in Rule 2210(a)(4), a member must offer to the person educational material that includes the following:

(A) a discussion of:

(i) characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;

(ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and

(iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

### **(c) Promotion of Specific CMOs**

In addition to the standards set forth above, retail communications and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this Rule.

(1) The retail communication or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Section 1 Title — Collateralized Mortgage Obligations

Coupon Rate

Anticipated Yield/Average Life

Specific Tranche — Number & Class

Final Maturity Date

Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3 Product Features (Optional):

Minimum Denominations

Rating Disclosure

Agency/Government Backing

Income Payment Structure

Generic Description of Tranche (e.g., PAC, Companion)

Yield to Maturity of CMOs Offered at Par

Section 4 Company Information:

Name, Memberships

Address

Telephone Number

Representative's Name

## **(2) Additional Conditions**

The following conditions must also be met:

- (A) All figures in Section 1 must be in equal type size.
- (B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.
- (C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member must be able to justify the assumption used. A copy of either the service's listing for the CMO or the member's justification must be attached to the copy of the communication that is maintained in the member's advertising files in order to verify that the prepayment scenario is reasonable.
- (D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.
- (E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.
- (F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

## **(3) Radio/Television Advertisements**

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

"The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:

"The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

**(4) Standardized CMO Communication Example**

Collateralized Mortgage Obligations

7.50% Coupon

7.75% Anticipated Yield to 22-Year Average Life

FNMA 9532X, Final Maturity March 2023

Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

\$5,000 Minimum

Income Paid Monthly

Implied Rating/Volatility Rating

Principal and Interest Payments Backed by FNMA

PAC Bond



Offered subject to prior sale and price change.

Call Mary Representative at (800)555-1234

Your Company Securities, Inc., Member SIPC

123 Main Street

Anytown, State 12121