

SECURITIES LAW ALERT

SEPTEMBER 2009

FINRA Issues Proposed New Rules Governing Communications With The Public And Issues Interpretive Guidance To Forms U4 And U5

Comments Sought on Revisions to Rules Governing Communications With the Public

On Monday, September 21, 2009, FINRA posted Regulatory Notice 09-55 requesting comments on proposed new rules governing communications with the public that would replace current NASD Rules 2210 and 2211 and portions of incorporated NYSE Rule 472.

The proposed changes streamline the categories of communications from six to three and require the filing with FINRA of certain types of communications that are currently not required to be filed.

Currently, NASD Rule 2210 divides communications into six separate categories, including (i) advertisements, (ii) sales literature, (iii) correspondence, (iv) institutional sales material, (v) independently prepared reprints and (vi) public appearances. The proposal would streamline these categories into: (i) institutional communication, (ii) retail communication, and (iii) correspondence.

The proposal would require an appropriately qualified registered principal to approve each retail communication

before its use or filing with FINRA. FINRA would eliminate the existing NYSE requirement that a “qualified person” approve in advance each advertisement, sales literature, or other types of communication by an NYSE member firm. The proposed rule generally maintains the supervision and review standards for correspondence and institutional communications currently found in NASD 2211 and 3010(d).

The proposal largely incorporates the content standards found in prior NASD rules and interpretations. However, firms should consult the proposal for changes to specific content standards for comparative illustrations, sales charges and expense ratios, and financial disclosure requirements. A copy of the Regulatory Notice and accompanying proposal can be found at <http://www.finra.org/Industry/Regulation/Notices/2009/P120004>. The comment period expires on November 20, 2009. ■

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FINRA Releases Interpretive Guidance to Forms U4 and U5

FINRA has released revised Interpretive Questions and Answers to Forms U4 and U5 in light of the recent revisions to the Forms. This guidance has, in the past, been a valuable source of information for firm personnel responsible for making reporting determinations. In addition to updating the Guidance to reflect the changes to the Forms with respect to representatives named or identified in arbitration claims

and amounts in controversy, of note in the revised Interpretive Guidance is FINRA's reminder to Firms (echoing guidance in Regulatory Notice 09-23, endnote 7) that reporting determinations be guided by a firm's "good faith" efforts. The Interpretive Guidance is available at: <http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/index.htm>. ■

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