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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66049; File No. SR-FINRA-2011-035)

December 23, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change, as modified by Amendment No. 1, to Adopt FINRA Rules 2210 (Communications with the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications with the Public Regarding Security Futures), and 2216 (Communications with the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook.

I. Introduction

On July 14, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change was published for comment in the Federal Register on August 3, 2011.³ The Commission received nine comment letters in response to the proposed rule change.⁴ On October 31, 2011, FINRA filed Amendment No. 1 to the proposed rule change and a letter

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011).

⁴ Comment letters are available at www.sec.gov.

responding to comments.⁵ The proposed Amendment No. 1 was published for comment along with an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1, in the Federal Register on November 7, 2011.⁶ The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011. The Commission received seven comment letters in response to the Notice and Proceedings Order.⁷ On December 22, 2011, FINRA filed Amendment No. 2 to the proposed rule change and a letter responding to comments.⁸ The text of Amendment No. 2 and FINRA's Rebuttal Letter are available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the

⁵ See letter from Joseph P. Savage, FINRA, to Elizabeth Murphy, Secretary, SEC, dated October 31, 2011 ("Response Letter"). The text of proposed Amendment No. 1 and FINRA's Response Letter are available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Response Letter is also available on the Commission's website at <http://www.sec.gov>.

⁶ See Securities Exchange Act Release No. 65663 (November 1, 2011), 76 FR 68800 (November 7, 2011) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings SR-FINRA-2011-035) ("Notice and Proceedings Order"). The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011.

⁷ See letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated December 7, 2011 ("Schwab"); letter from Alexander C. Gavis, Vice President & Associate General Counsel, Fidelity Investments, dated December 7, 2011 ("Fidelity"); letter from David T. Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated December 7, 2011 ("FSI"); letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated December 7, 2011 ("ICI"); letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee of the Securities Industry and Financial Markets Association ("SIFMA"); letter from Sandra J. Burke, Principal, Vanguard, dated December 7, 2011 ("Vanguard"); and letter from Jeremiah McGair, Attorney, Wolverine Execution Services, LLC, dated December 7, 2011 ("Wolverine"). Comment letters are available at www.sec.gov.

⁸ See letter from Joseph P. Savage, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011 ("Rebuttal Letter").

Commission's Public Reference Room. FINRA's Rebuttal Letter is also available on the Commission's website at <http://www.sec.gov>.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

First, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the definition of "institutional communication" a member's internal communications used to train or educate registered persons about the products or services of the member. In this regard, FINRA proposes to delete proposed Supplementary Material 2210.01 in its entirety. FINRA also proposes to revise proposed FINRA Rule 2210(a)(3) as set forth below. Proposed new language is in italics.

(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.

Second, FINRA is proposing to amend proposed FINRA Rule 2210 to allow a member that is subject to the new member pre-use filing requirements to file a broker-prepared free writing prospectus within 10 business days of first use, rather than at least 10 business days prior to first use. In this regard, FINRA proposes to replace proposed FINRA Rule 2210(c)(1)(A) with the following:

(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.

Third, in response to comments received by the Commission, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. FINRA also is proposing to amend FINRA Rule 2210 to exclude from the filing requirements 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). In this regard, FINRA proposes to insert the following new sub-paragraphs (M) and (N) at the end of paragraph (c)(7) of proposed FINRA Rule 2210:

(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).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the filing as amended by Amendments 1 and 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-035 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3

p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-035 and should be submitted on or before January 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

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⁹ 17 CFR 200.30-3(a)(12).