



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

August 18, 2011

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: FINRA Customer Account Statement
Proposal; File No. SR-FINRA-2009-028

Dear Ms. Murphy:

The Investment Company Institute¹ appreciates the opportunity to comment on FINRA's proposal to adopt a new rule, Rule 2231, relating to customer account statements as part of its rule consolidation process.² The Institute supports most of the revisions to Rule 2231 but recommends an additional revision to the rule and related Supplementary Material, as discussed in more detail below.

The Institute's Previous Opposition to Rule 2231

When Rule 2231 was originally proposed by FINRA for comment in May 2009, the Institute expressed very serious concerns with its requirement that general securities dealers provide their customers account statements monthly, instead of quarterly, which is the current practice.³ We

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.1 trillion and serve over 90 million shareholders.

² See *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook*, SEC Release No. 34-64969; File No. SR-FINRA-2009-038, dated July 26, 2011 (the "Release"), which was published at 76 Fed. Reg. 46340 (August 2, 2011).

³ See Letter from the undersigned to Ms. Elizabeth M. Murphy, Secretary, SEC, dated June 10, 2009.

explained that such a change would have been inconsistent with the requirements imposed on mutual funds under the Securities Exchange Act of 1934, unduly disruptive to current systems, and costly to their shareholders.

The Institute's Support for the Adoption of Rule 2231

We are very pleased that, in response to the concerns raised by the Institute and others, the current version of FINRA's rule has been revised to address these concerns in large part. In particular, a new subsection (c) has been added to the rule to permit broker-dealers to continue to send account statements quarterly if authorized by an appropriate rule, regulation, release, interpretation, or "no action" position or exemption issued by the SEC or its staff subject to certain conditions. Additionally, statements can continue to be sent quarterly if the only activity in the account relates to automatic reinvestment of funds or sweep programs. As a result of these revisions, most of the Institute's fundamental concerns with the proposed rule have been resolved such that now we are largely able to support the rule's adoption. We appreciate FINRA's efforts to address our concerns.

Our remaining concern with the rule is the provision in new paragraph (c)(3) conditioning members' reliance on these exclusions "only if customers are provided access to current information on their accounts via the Internet and by telephone." Our concern with this requirement is two-fold. First, it appears inconsistent with the rationale behind new paragraph (c)(1), which was added in recognition of the SEC long permitting the sending of quarterly account statements in certain circumstances. Because the SEC's position is not conditioned on providing investors who receive quarterly statements access to their accounts in a medium other than the written account statement, we do not believe FINRA should impose such a condition.

Should FINRA retain this condition notwithstanding our opposition, our second concern with it relates to its requirement that FINRA members issuing quarterly statements provide the customers receiving such statements ready account access to their accounts by *both* the phone and the Internet. Requiring FINRA members to provide their customers account access via both media seems unnecessary⁴ -- access via one of these two sources should satisfy whatever concerns FINRA has with ensuring providing customers ready access. If paragraph (c)(3) continues to apply to the exclusion in paragraph (c)(1), we recommend that it be revised to enable general securities members relying on the exclusion in paragraph (c)(1) to provide their customer access to account information via *either* the telephone or the Internet.

⁴ The short comment period for FINRA's proposal has precluded us from polling our members to determine which of them currently provide access to account information via both of these media. Although use of the Internet is quickly becoming ubiquitous, it is possible, for security reasons or otherwise, that some FINRA members do not offer current account information via both media. Requiring them to do so may result in such members incurring increased costs and exposure in order to continue sending their customers quarterly statements as permitted by the SEC.

Continuing Concerns with Supplementary Material .02

In our previous comment letter on the proposal, we also expressed concern with Supplementary Material .01 associated with the rule. This Supplementary Material would prohibit a FINRA member from providing a copy of an account statement, confirmation, or other communication relating to a customer's account to any person other than the customer without the customer's express *written* instruction to do so. Our letter noted that this provision would impede the legitimate sharing of information that occurs in connection with processing, servicing, and maintaining customer accounts. As stated in our letter, "it is not uncommon for a financial adviser that effects a mutual fund transaction on behalf of a customer to receive a copy of the information provided by the mutual fund company to the customer for purposes of servicing the customer's account."⁵ The letter additionally noted that the privacy protection under the Gramm-Leach-Bliley Act and SEC Regulation S-P, which permit the sharing of consumers' non-public personal information for certain purposes, should amply protect investors and assuage any FINRA concerns regarding the sharing of this information.

In the current version of FINRA's proposal, this Supplementary Material has been renumbered from .01 to .02 and revised to (1) exclude from its coverage account statements sent to comply with NASD Rule 3050 and NYSE Rule 407⁶ (the "3050/407 carve out") and (2) require a copy of such statements to be sent directly to the customer. In response to the comments of the Institute and others, the Release notes that "Due to several concerns (*e.g.*, identity theft, privacy concerns, etc.), FINRA believes firms must be able to document and record customer consent to send customer account statements to third parties."⁷

While we appreciate FINRA's concerns with protecting consumers from identity theft and protecting their privacy, we do not believe that the broad requirement of proposed Supplementary Material .02 is necessary to address these concerns. We recommend that the rule be more narrowly tailored by expanding the 3050/407 carve out to include the sending of customer account statements without written instruction if the third party recipient is both (1) registered with the SEC under the Federal securities laws or with a state securities commission and (2) subject to privacy regulations adopted under the Gramm-Leach-Bliley Act. We believe these protections would amply address any FINRA concerns with identity theft or privacy. Indeed, we additionally note that persons that would qualify for this exception would also be subject to the Red Flag Rules of the Federal Trade Commission, which were specifically designed to address concerns with identity theft. Accordingly, we believe this approach will accommodate FINRA's expressed concerns with protecting investors' privacy and

⁵ ICI Letter at p. 6.

⁶ NASD Rule 3050 and NYSE Rule 405 require a FINRA member carrying an account in which an associated person of another member has an interest to send duplicate confirmation and account statements to such other member.

⁷ Release at p. 19.

