

July 6, 2016

Via E-Mail to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Mr. Robert W. Errett  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: Release No. 34-78026; File No. SR-FINRA-2016-018: Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)**

Dear Mr. Errett:

The Asset Management Group (“AMG”) of the Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment to the Securities and Exchange Commission (“SEC”) on the Financial Industry Regulatory Authority’s (“FINRA”) proposed rule change to amend various aspects of Rule 2210 governing communications with the public.<sup>2</sup> AMG strongly supports FINRA’s engagement in a retrospective rule review and believes that the proposed amendments will result in benefits for asset management firms and investors.

### ***I. INTRODUCTION & BACKGROUND***

Rule 2210 regulates both new and existing FINRA members’ communications with the public by outlining the approval, review, filing and content requirements applicable to various types of communication. In 2015, FINRA posted Regulatory Notice 15-16, which requested comment on proposed amendments to the filing requirements of FINRA Rule 2210, and subsequently published a frequently-asked-questions (“FAQ”) page, which clarified definitions and provided examples. SIFMA’s broker-dealer members submitted comments supporting the amendments and encouraging FINRA to continue its retrospective rule review.<sup>3</sup> In response to SIFMA and others’ comments on Regulatory Notice 15-16, FINRA filed with the SEC a proposal to further amend

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<sup>1</sup> SIFMA AMG’s members represent U.S. asset management firms whose combined global assets under management exceed \$34 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS, and private funds such as hedge funds and private equity funds.

<sup>2</sup> See generally FINRA Filing Notice 34-78026 (June 9, 2016) (available at: <https://www.sec.gov/rules/sro/finra/2016/34-78026.pdf>) [last visited June 22, 2016].

<sup>3</sup> See Letter from Kevin Zambrowicz, SIFMA, to Ms. Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated July 2, 2015.

FINRA Rule 2210.<sup>4</sup> AMG appreciates this opportunity to comment separately on the most recent proposal to make changes to Rule 2210, as it provides us with the opportunity to highlight its benefits for asset management firms.

In general, FINRA's proposal would:

- Clarify that the Rule 2210 filing requirement does not apply to annual and semiannual reports on file with the SEC.
- Revise Rule 2210(c)(7)(F) to clarify that, among other things, "similar offering documents concerning securities offerings that are exempt from SEC or state registration requirements," are also exempt from Rule 2210 filing requirements.
- Amend Rules 2210(b)(4)(A) and 2210(c)(3)(A) to require firms to keep a back-up of fund ranking and performance comparison reports included in any retail communication, instead of filing a copy with FINRA.
- Eliminate the filing requirement for investment analysis tool report templates and retail communications concerning such tools.
- Exclude "generic" investment company retail communications from the filing requirement in Rule 2210(c)(3)(A).
- Expand the exclusion proposed on Rule 2210(c) to allow firms to include updates on previously filed communications with non-predictive narrations of market events and factual reports of portfolio changes, without having to refile the template.

As discussed below, AMG supports each of these changes.

## ***II. COMMENTS ON THE COMMUNICATIONS WITH THE PUBLIC RULES***

### ***Annual and Semiannual Report Exclusion:***

AMG supports the exclusion of annual and semi-annual reports on file with the SEC from the Rule 2210 filing requirements. This exclusion would make FINRA's rule less burdensome on asset management firms by eliminating redundant filing requirements.

### ***Offering Documents Exempt from SEC or State Requirements:***

AMG supports the amendment to Rule 2210(c)(7)(F), which would exclude from filing any securities offering documents that are exempt from the SEC or state registration requirements. AMG appreciates the clarity that the proposed amendment provides and believes it would afford relief to asset management firms from duplicative filings.

### ***Ranking and Comparison Backup Filing Requirements:***

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<sup>4</sup> Filing Notice 34-78026.

AMG supports the amendments to Rules 2210(b)(4)(A) and 2210(c)(3)(A), which would eliminate the fund ranking and performance comparison backup material filing requirements and instead require members to maintain back-up materials as part of their records. Filing hard copies with FINRA even though the information is available online is inefficient for asset management firms and we believe would not provide FINRA with any real benefit. While this requirement was originally necessary for FINRA staff prior to technological advances, these materials can now be readily accessed online. AMG commends FINRA for retrospectively updating this filing requirement, which has now become unnecessary.

**Filing Requirement for Investment Analysis Tool Report Templates and Related Retail Communications:**

AMG supports the amendment to Rule 2210(c)(3)(C), which would eliminate filing requirements for investment analysis tool report templates and retail communications regarding such tools. AMG commends FINRA for retrospectively reviewing the requirement and updating it to a per-request basis.

**Generic Investment Company Retail Communications:**

Generally, AMG supports the amendment to Rule 2210(c)(3)(A), which would exclude the filing requirements for generic investment company retail communications. We agree with FINRA that eliminating the costs of filing generic retail materials will encourage asset management firms to provide more frequent and timely information to investors.

However, we ask that FINRA further clarify the definition of “generic investment company retail communications” to ensure that asset management firms understand the rule and how it interrelates with SEC Rule 482,<sup>5</sup> which applies to advertisements and other sales materials. Such a change could be accomplished through updated FAQs.

**Filing Exclusion for Templates:**

AMG supports the amendment to Rule 2210(c), which would allow members to update previously filed communications with non-predictive narrations of market events and factual reports of portfolio changes, without having to refile the template. AMG agrees with FINRA that under the new filing template exceptions, asset management firms will likely distribute updated communications to investors sooner if they are not required to file them. AMG also agrees with FINRA that the cost associated with these re-filings exceed the investor benefits that result from FINRA’s staff having the ability to review a re-filed template.

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<sup>5</sup> 17 C.F.R. § 230.482 (2014).

**III. FINRA'S RETROSPECTIVE RULE REVIEW**

Generally, AMG would like to commend FINRA for undertaking a retrospective rule review. We encourage FINRA to continue to review its rulebook and to solicit member feedback on changes to rules and interpretations. Unnecessary and outdated regulatory requirements do not benefit anyone, particularly investors who ultimately bear the burden of increased costs and inefficiencies. AMG is hopeful that the proposed amendments will save time and expenses for investors as well as increase investors' ability to focus on valuable communication information.

AMG also encourages FINRA to continue to publish FAQs regarding updated rules that include examples and interpretations. With regard to Rule 2210, FAQ answers addressing what is permitted under the definition of "generic investment company retail communications" would ensure asset management firms are properly complying with the rule, within the confines of SEC Rule 482.

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AMG sincerely appreciates the opportunity to comment on FINRA's proposed rule changes governing communications with the public. We stand ready to provide any additional information or assistance the SEC might find useful as it reviews the changes, which we fully support. Please do not hesitate to contact either Timothy Cameron at [REDACTED] or [REDACTED] or Lindsey Keljo at [REDACTED] or [REDACTED] with any questions.

Sincerely yours,



Timothy W. Cameron, Esq.  
Asset Management Group - Head  
Securities Industry and Financial Markets  
Association



Lindsey Weber Keljo  
Vice President & Assistant General Counsel  
Asset Management Group  
Securities Industry and Financial Markets  
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cc: Robert W. Cook, Chairman and Chief Executive Officer, FINRA  
Robert L.D. Colby, Chief Legal Officer, FINRA  
Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA