

## Advertising Fees

### FINRA Amends Section 13 of Schedule A to the FINRA By-Laws to Establish Charges for New Option to File Websites and Web Pages in Native Format

Implementation Date: October 5, 2017

#### Summary

FINRA has filed for immediate effectiveness amendments to Section 13 of Schedule A to the FINRA By-Laws governing the review charge for communications filed with or submitted to FINRA's Advertising Regulation Department.<sup>1</sup> The amendments do not increase the filing fees for the review of communications. The amendments establish charges for a new option to submit websites and web pages in their native format in anticipation of the impending upgrade to the Advertising Regulation Electronic Files (AREF) System. The amendments do not change the current filing requirements under FINRA Rules 2210 (Communications with the Public) or 2220 (Options Communications).

Included with this *Notice* is Attachment A, the text of amended Section 13.

Questions concerning this *Notice* should be directed to:

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- ▶ Primit K. Das, Associate Director, Advertising Regulation Technology, at (240) 386-4544 or [Primit.Das@finra.org](mailto:Primit.Das@finra.org).

#### Background & Discussion

In April 2014, FINRA launched a retrospective review of its communications with the public rules to assess their effectiveness and efficiency. One of the actions arising from this retrospective review has been an effort to upgrade FINRA's AREF System, a web-based application available through the FINRA Firm Gateway<sup>2</sup> that enables firms to electronically submit communications with the public for review by the FINRA.<sup>3</sup>

#### October 2017

##### Notice Type

- ▶ Rule Amendment

##### Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

##### Key Topics

- ▶ Advertising Review Charges
- ▶ Communications with the Public

##### Referenced Rules & Notices

- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2220
- ▶ Section 13 of Schedule A to the FINRA By-Laws

Currently, the AREF System accepts such submissions in a variety of file formats for print (*e.g.*, .doc, .rtf, .txt), video (*e.g.*, .mov, .mp4, .wmv), audio (*e.g.*, .aif, .mp3, .wav) or other form (*e.g.*, .pdf), but not for website or web page communications in their native format (*e.g.*, .html). Consequently, firms submitting website or web page communications through the AREF System must convert them from native format to a format such as Portable Document Format (PDF). This conversion process can be burdensome, sometimes resulting in voluminous PDF pages. The impending upgrades to the AREF System will make the submission of website or web page communications more efficient by including the capability to accept such communications in their native format. Firms that choose to use the new capability will package websites or web pages in a compressed file format and submit them through the AREF System for review by FINRA. Firms will include in their submissions a manifest that lists each unique web page address (Uniform Resource Locator or URL) submitted for review.

### Amendments

Rules 2210 and 2220 require members to file with FINRA specified retail communications at least 10 business or calendar days prior to use, within 10 business days of first use, or within such shorter period as FINRA may allow, as applicable. For example, new members, for a period of one year beginning on the date their FINRA membership becomes effective, generally must file with FINRA 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.<sup>4</sup> As another example, all members generally must file within 10 business days of first use any retail communication—including a website communication—that promotes or recommends a specific registered investment company or family of registered investment companies.<sup>5</sup> FINRA evaluates these and other communications that are subject to filing requirements or which firms file voluntarily for compliance with applicable rules of FINRA, the SEC, the Municipal Securities Rulemaking Board and the Securities Investors Protection Corporation. Pursuant to the content standards of Rule 2210, FINRA helps to ensure that all member firms' communications are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service. Among other things, FINRA rules prohibit member communications from including false, exaggerated, unwarranted, promissory or misleading statements or claims.

Currently, Section 13 imposes a review charge for each communication filed with or submitted to FINRA (except for items that are filed or submitted in response to a written request from FINRA issued pursuant to the spot check procedures set forth in Rules 2210(c)(6) and 2220(c)(3)). The rates charged are based on the number of pages for printed material or the length of video or audio media. In addition, there are surcharges for expedited review.

The amendments to Section 13 establish charges for submission of websites and web pages in native format, in anticipation of the upgraded AREF System capabilities. FINRA anticipates this upgraded AREF System capability will be operational in October 2017. A firm's use of the upgraded AREF functionality will be voluntary. The amendments establish rates of \$125, plus \$10 for each web page reviewed in excess of 10 pages. For expedited reviews, the amendments establish rates of \$600 per item plus \$50 for each web page reviewed in excess of 10 pages. For the purposes of the charging schedule, each distinct URL would be treated as a web page. The amendments mirror the current rates for printed material, which remain unchanged. Thus, the amendments maintain parity in charging, irrespective of the form of filing or submission.

FINRA notes that firms will not be obligated to file or submit website communications in native format. They may continue to convert those communications to a printed format and submit them at the unchanged printed page rate if they find that method more efficient or economical. The underlying filing requirements have not changed.

## Endnotes

1. See Exchange Act Release No. 81801 (October 3, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Review Charges for Communications Filed with or Submitted to FINRA) (File No. SR-FINRA-2017-030).
2. FINRA Firm Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows members to submit required filings electronically to meet their compliance and regulatory obligations.
3. Other actions FINRA has taken in response to the recommendations include additional guidance for, and amendments to, the communications with the public rules. See [Regulatory Notice 17-18](#) (April 2017) (Guidance on Social Networking Websites and Business Communications); Exchange Act Release No. 78823 (September 13, 2016), 81 FR 64240 (September 19, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Amending FINRA Rules 2210 (Communications with the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), and 2214 (Requirements for the Use of Investment Analysis Tools), as Modified by Partial Amendment No. 1) (File No. SR-FINRA-2016-018); [Regulatory Notice 15-17](#) (May 2015) (Guidance on Rules Governing Communications With the Public).
4. See FINRA Rule 2210(c)(1).
5. See FINRA Rule 2210(c)(3).

## ATTACHMENT A

Below is the text of the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

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### SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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#### **Section 13 — Review Charge for Communications Filed or Submitted**

There shall be a review charge for each and every communication, whether in printed, video or other form, filed with or submitted to FINRA, except for items that are filed or submitted in response to a written request from FINRA's Advertising Regulation Department ("the Department") issued pursuant to the spot check procedures set forth in FINRA rules as follows: (1) for printed or website material reviewed, \$125.00, plus \$10.00 for each printed page or webpage reviewed in excess of 10 pages; and (2) for video or audio media, \$125.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Department there shall be a review charge of \$600.00 per item plus \$50.00 for each printed page or webpage reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Department, unless a shorter or longer period is agreed to by the Department. The Department may, in its sole discretion, refuse requests for expedited review.