

Client Alert

Current Issues Relevant to Our Clients

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FINRA Provides Guidance on Fee Disclosures for Retail Brokerage Accounts and IRAs

In a recent regulatory notice, the Financial Industry Regulatory Authority, Inc. (“FINRA”) provided guidance on disclosure of fees in communications concerning retail brokerage accounts and IRAs. A copy of the regulatory notice is available [here](#).

Background

FINRA has observed overly broad language in sales materials of certain broker-dealer firms implying that no fees are charged with respect to their retail brokerage accounts and IRAs. However, FINRA noted that while certain types of fees may not be charged with respect to these accounts, they may be subject to fees for opening, maintenance and closing in addition to fees for certain ancillary services. FINRA also noted that investment products held in such accounts may have their own product level expenses such as brokerage commissions and management fees.

FINRA indicates in the guidance that it believes such practices are inconsistent with FINRA Rule 2210. Among other things, that rule requires that broker-dealer communications:

- not be false, exaggerated, unwarranted, promissory or include misleading statements or claims,
- be fair and balanced and do not omit material information that would cause them to be misleading; and
- provide a sound basis for evaluating the facts with respect to any product or service.

Practices FINRA Identified as Inconsistent with Rule 2210

FINRA highlighted the following practices which, in its view, would not be consistent with FINRA Rule 2210:

- Claims that accounts are “free” such as referring to an IRA as a “free IRA” or “no-fee IRA”;

- Stand-alone claims such as “Start investing for less with no account opening fees” without a corresponding description of the fees that do apply; and
- Prominent claims regarding an account’s no-fee structure with only a footnote to disclose information about other fees that may apply.

Guidance

FINRA noted that all claims regarding fees must be accompanied by clear disclosure of the types of fees that may be charged. FINRA noted that a problematic stand alone statement to “Start investing for less with no account opening fees” could be made more fair and balanced by adding “Other account fees, fund expenses, brokerage commissions and service fees may apply.” FINRA noted that relegating such clarifying statements to a footnote would be inappropriate and that any headline statements should be accompanied by a full explanation in close proximity and prominence. As an example, FINRA noted that the following may be appropriate where it links to a more comprehensive description of applicable fees:

“There is no annual maintenance fee if you keep a minimum balance of \$5,000 in the account. Account opening and closing fees may apply depending on the amount invested and the timing of the account closure. There may be costs associated with the investment in the account such as loads, expenses or brokerage commissions. Fees for optional services may also apply. [Click here for a full explanation of our fees.](#)”

The description narrowly describes the circumstances and type of fee that is eliminated and immediately follows that with a description of the fees that may apply along with a

link to an even more comprehensive description of applicable fees.

In light of FINRA's guidance, broker-dealers may use this as an opportunity review both existing and future communication pieces which include fee descriptions to ensure that they are fair and balanced and do not omit material information that would cause them to be misleading.

[For More Information](#)

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