

# Structured Thoughts

*News for the financial services community.*

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## **Complex Products and Conducting a Reasonable Basis Suitability Review**

In the past several years, FINRA has paid substantial attention to the suitability of structured products for particular investors, issuing a variety of new rules and regulatory notices. These include, but are not limited to, FINRA’s revised suitability rule, Rule 2111, and its guidance for complex securities set forth in Regulatory Notice 12-03.

In addition to customer-specific suitability, FINRA expects members to make a “reasonable basis” suitability determination: a product must be suitable for at least some investors. For example, issuers cannot sell products for which “the house always wins,” or that are too complex to be understood by any retail investor. In order to make this determination, the firm must perform reasonable diligence to understand the nature of the transaction, as well as the potential risks and rewards. This understanding should be informed by an analysis of likely product performance in a wide range of normal and extreme market conditions.

In practice, how do market participants implement these guidelines? Much of the guidance is principles-based, and it is not necessarily obvious how it should be applied in a given situation.

### **Commencing the Review**

FINRA Regulatory Notice 12-03 sets forth a variety of questions that product manufacturers need to ask prior to introducing a new complex product:

- For whom is the product intended? Is it intended for limited or general retail distribution, and, if limited, how will it control its distribution?

- To what types of customers should this product not be offered?
- What is the investment objective and is that objective reasonable in relation to the product's characteristics? How does the product add to or improve the firm's current offerings? Can less complex products achieve the same objectives?
- What assumptions underlie the product, and how sound are they? How is the product expected to perform in a variety of market or economic scenarios? What market or performance factors determine the investor's return? Under what scenarios would the product's planned principal protection, enhanced yield, or other benefits not occur?
- What are the risks for investors? If the product was designed mainly to generate yield, does the yield justify the risks?
- How will the firm and registered representatives be compensated for sales of this product? Will the offering of the product create any conflicts of interest between the customer and any part of the firm? If so, how will those conflicts be addressed?
- Are there novel legal, tax, market, investment or credit risks?
- Does the product's complexity impair understanding and transparency of the product?
- How does this complexity affect suitability considerations or the training requirements for the product?
- How liquid is the product? Is there an active secondary market?

In addition, a broker may consider a number of additional factors:

- Do any competitors already offer a similar product? Of course, when our children use the behavior of other kids as a justification for bad acts, we may say to them: "If your friend jumped off the Empire State Building, would you do so too?" However, market practice may in some cases provide some degree of information as to potential risks.
- Is the payout formula particularly complex? Is the payout formula unsuitable for certain types of investors?
- To what extent does the product incorporate leverage?
- Is the linked asset class capable of being understood by a typical investor?
- Does the product reference a new asset class, or a proprietary index?
- Does the product create any unusual disclosure concerns?
- What is the format, or "wrapper", in which the product will be packaged?

Some market participants categorize or "group" products based on particular attributes, and may subject certain products to heightened scrutiny. Other market participants have formulated a "matrix" approach and identified various characteristics that a committee should consider in connection with a suitability review. Some "benchmark" their products against other products offered by competitors.

## Factors to Consider

The following table sets forth some considerations that may inform a committee's analysis as it reviews a potential new product.

<b>Characteristics of Product</b>	<b>Impact of Product Features</b>
General product description, including the maximum term to maturity.	<i>Products with a longer term to maturity may be perceived as riskier, less liquid, and more difficult for a potential investor to evaluate.</i>
Consider the potential performance of the product under current market conditions. What assumptions underlie the product? How is the product expected to perform in different economic scenarios?	<i>The committee should consider the likely pay-out under normal scenarios, as well as under stress scenarios. FINRA will consider whether the product is "designed to fail," or whether it offers a value proposition only under certain limited scenarios.</i>
What is the product's investment objective? Is that investment objective reasonable in relation to the product's characteristics? Does the product provide market access, or exposure to a particular investment strategy, or otherwise add to the firm's current product offerings?	<i>FINRA will consider the fundamental objective of the product. Is the new product priced such that the potential yield represents an appropriate rate of return in relation to the volatility of the reference asset based on comparable and similar investments, in terms of structure, volatility and risk? For example, similar structured products based on reference assets that possess substantially similar volatility characteristics, but which offer materially different rates of return, could call into question whether the instrument with the lower yield meets the reasonable basis suitability standard.</i>
What is the target market for the product? Are there particular types of accounts/investors for which the product may not be appropriate?	<p><i>Is it a retail product? High net worth/private bank client product? What are the minimum denominations? Is there a minimum purchase requirement? Is it intended for investors that seek higher yield? For investors that do not need current income?</i></p> <p><i>Is the economic exposure provided by the product appropriate for the relevant class of investor, both in terms of risk and "type" of exposure?</i></p> <ul style="list-style-type: none"> <li>• <i>For example, a product providing heavily leveraged downside exposure to a particular reference asset may not be suitable for retail investors. In addition, exposure to certain types of complex "hidden assets" (for example, "skew" and "smile") may also not be appropriate for retail investors, even if the risk of the product is not particularly high.</i></li> <li>• <i>When selling a product into the retail market, consider the types of investments typically held by retail investors and whether the proposed new</i></li> </ul>

Characteristics of Product	Impact of Product Features
	<p><i>product would be an appropriate component of such an investor's investment mix.</i></p> <p><i>Can the new product be explained in a manner that can be reasonably expected to be understood by the relevant class of investor? Can investors in that class be reasonably expected to be capable of evaluating the risks?</i></p> <p><i>Could interests in the reference asset be sold directly to the relevant class of investor?<sup>1</sup> As a general rule, if the reference asset could not be sold directly, a structured product on such reference asset may be problematic.</i></p>
<p>Does the product incorporate leverage? Incorporate any algorithmic models, or quantitative strategies? What are the elements, if any, of the product that might be deemed "complex"? Could a less complex structured product be developed that could achieve the same objective?</p>	<p><i>FINRA assumes that products that incorporate leverage are "riskier" and more difficult for a retail investor to understand and evaluate. Leverage may magnify losses in unpredictable ways. Similarly, FINRA assumes that products that incorporate a proprietary model or quantitative strategies are more complex, even if the payout is simple.</i></p>
<p>Does the product involve a new or unusual index?</p>	<p><i>The committee may consider asking additional questions or formulating an additional questionnaire for products that reference an index, which may include several considerations: Does the index use a complex strategy (e.g., market-neutral, momentum, carry, negative serial correlation, etc.)? Does the index have high embedded leverage? Is there frequent rebalancing?</i></p> <p><i>Are there multiple indexing levels? Is the index actively managed? Does the index track a broad asset class? Does the index have a volatility control? Does the note have downside leverage? Does the product have a low minimum purchase amount (&lt;\$1,000)?</i></p>
<p>What market or performance factors determine the investor's return? Under what scenarios would principal protection, enhanced yield, contingent protection or other presumed benefits not be realized?</p>	<p><i>FINRA views products that incorporate "contingencies" (such as a "knock-out level" that is monitored during substantially the entire term of a note) as more challenging for retail investors to understand. Retail investors may not understand how contingencies will affect their potential investment or their return. Products with contingencies will require more detailed disclosures; the disclosures, of course, must be clear. There is also a higher risk that distributors may not understand or be able to explain the contingencies.</i></p>

<sup>1</sup> For example, if an index tracks a strategy linked to equity options, would the investor be eligible for purchases of the underlying options?

Characteristics of Product	Impact of Product Features
How will the distributor be compensated for offering the product ( <i>i.e.</i> , what are the associated fees paid to third parties)? Is there anything different about the fees that will be paid in connection with the distribution of this product compared to other products?	<i>FINRA is concerned that a “structured product” contains embedded fees and that the “packaging” may obscure inappropriate fees or mark-ups. In addition, FINRA is concerned that the compensation paid to product manufacturers or distributors may motivate them to sell a structured product in favor of a simpler product.</i>
Will the offering of the product create any conflicts of interest between the investor and any part of the firm or its affiliates? If so, how will those conflicts be addressed?	<i>FINRA has conducted a “conflicts of interest” sweep and has noted that structured products may involve conflicts of interest (whether in connection with the product being manufactured by the issuer’s affiliated broker-dealer; the hedging arrangements between the affiliated broker-dealer and the issuer; the index creation; any calculation agent function; or distribution through private banking or advisory channels.</i>

### What Can Be Done Where Suitability Concerns Exist

Once a product has been identified as involving suitability issues, a variety of tools exist to address the relevant issues.

- Requiring higher minimum denominations and/or minimum purchase amounts, to help screen out less sophisticated investors.
- Imposing restrictions on the types of potential investors.
- Limiting sales to advised channels.
- Only selling the product through particular distributors that are better suited to handle complex products, and have demonstrated their ability to do so.
- Providing additional training to the distributors as to the particular product, including which product risks and features need to be most carefully explained to purchasers.<sup>2</sup>
- Requiring special training for the broker’s own personnel.
- Granting only conditional approval for a limited period of time, subject to certain requirements.
- Mandating post-approval review within a specified period of time, to determine whether sales were made through the proper channels, and to assess product performance.

<sup>2</sup> Needless to say, whether or not a structured product is complex, the relevant offering documents must have robust disclosures of the product features and relevant risk factors.

## Guidelines for Presenting Backtested Performance Data

Issuers that link structured products to a new index with limited, or no, performance history typically present hypothetical historical performance, or backtested, data to show how the index would have performed prior to the inception of the index.

In this article, we present guidelines for backtested data disclosure and also discuss any guidance from U.S. regulators on the subject.

### Some common sense disclosure principles:

- Backtested data must be objective and capable of reproduction;
- Backtested data must cover a time period long enough to include a variety of market conditions, including stressed periods;
- Appropriate disclosure about the backtesting methodology and appropriate risk factors highlighting the difference from historical data must be included.

*Objective and replicable data.* Backtested data must be based on objective formulae and models applied to past historical data. The methodology used to create the backtested data should be the same methodology used to calculate the index, with appropriate disclosure as to any differences in the application. An independent third party, or a skilled investor, should be able to independently reproduce the backtested data. Necessarily, this excludes presenting backtested data for indices that are “managed”; *i.e.*, where discretion is used in calculating the level of the index. That discretion could not be reproduced by an independent third party. Understandably, some discretion might be required to create the backtested data. The required discretion should be minimal and fully disclosed to investors.

*Representative time periods.* Backtested data should be presented for a time period long enough to encompass different market conditions. Including stressed periods, such as the recent financial crisis, is particularly important.

Currently, presenting a five-year period would show how an index would have performed during and after the financial crisis. However, as time goes on, a five-year period will not include the period from 2008 - 2010. Issuers should consider using longer periods, when necessary, to include periods representing different market conditions in order to show investors how the index might perform in similar future periods. Issuers should avoid “cherry picking,” or presenting backtested data that shows only periods when the index would have performed optimally.

*Full disclosure.* Backtested data should be accompanied by additional disclosure that explains how the data was derived (including any assumptions and the impact of fees), that the data is hypothetical and not actual, was created with the benefit of hindsight and that the backtested data cannot accurately predict future results. Issuers should also include risk factor disclosures that explain that backtested data is not necessarily accurate and is not predictive of future performance. Issuers should disclose that there may be conditions (*e.g.*, very high or low interest rate environments) for which the backtested data may not be effective. If the index has actual historical performance results, the backtested data may be presented alongside the historical data, with an explanation of the two time periods and any differences in the data.

### Regulatory Guidance

As many readers know, there are no specific Securities and Exchange Commission or Financial Industry Regulatory Authority, Inc. regulations that address the use of backtested data. Accordingly, market participants look to general disclosure principles, and other statements and materials from the regulators, in order to guide their practices.

In the SEC’s April 2012 sweep letter sent to structured products issuers (question 12), the SEC asked issuers whether they use backtested data and, if so, whether the information was provided to investors and how it was presented.<sup>3</sup> After

<sup>3</sup> The SEC’s April 2012 sweep letter can be found at <http://www.sec.gov/divisions/corpfin/guidance/structurednote0412.htm>.

receiving detailed responses from a variety of major issuers, the SEC did not object to the inclusion of such data. Absent specific guidance from the SEC, the key test remains whether the data is presented in a manner that is not misleading.

FINRA recently provided written guidance in the context of broker-prepared materials for exchange-listed products provided to institutional investors.<sup>4</sup> FINRA's approval of the use of backtested data in these materials is limited to a narrow set of circumstances. In its guidance, FINRA reiterated its historic position that the presentation of backtested data to retail investors does not comply with its disclosure standards. FINRA also warned that the backtested data should not be given excess weight in a recommendation to an investor.

It is possible that backtested data aimed solely at educating investors about product risks, together with providing a balanced perspective without over-emphasizing a product's positive features, can be differentiated from the use of backtested data to which FINRA objects.

In private discussions, FINRA has recently reiterated its position against the use of backtested data in "retail communications," as that term is defined in FINRA Rule 2210(a)(5), relating to structured products (not just exchange-listed products). In "institutional communications," as that term is defined in FINRA Rule 2210(a)(3), relating to structured products, FINRA indicated that its application of the content standards of Rule 2210(d) to backtested data would not be applicable in the same manner as it is to retail communications. Consequently, the use of backtested data may be appropriate in institutional communications relating to structured products, in the discretion of the broker-dealer.

## Conclusion

Backtested performance data may be used in issuer-prepared offering documents for structured products. The data itself should be objective and reproducible, and cover a sufficient time period so as not to be misleading. The presentation must contain appropriate disclosure as to the methodology used to create the backtested data and appropriate risk factors. Broker-dealers preparing materials relating to structured products containing backtested data should consider FINRA's guidance, and not include such data in any retail communications.

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## IOSCO Final Report on Principles for Financial Benchmarks

We have previously reported on the consultation on financial benchmarks by the International Organization of Securities Commissions ("IOSCO")<sup>5</sup>, and its follow-up consultation report (the "Consultation Report")<sup>6</sup> setting out draft principles (the "Principles") regarding *inter alia* benchmark calculation, determination, related governance issues and transparency processes. IOSCO has now released its final report (the "Final Report") on the Principles on 17 July 2013.<sup>7</sup>

The Final Report makes certain amendments and clarifications to the draft Principles and the scope of their application, in response to consultation feedback. The Final Report states that in general, there was a good level of support for the Principles, with the majority of comments on the technical detail rather than the substantive approach. The key amendments are analysed below.

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<sup>4</sup> A full discussion of FINRA's interpretive guidance can be found in Structured Thoughts, Volume 4, Issue 6 (April 26, 2013), at: <http://www.mofo.com/files/Uploads/Images/130426-Structured-Thoughts.pdf>. The FINRA guidance is available at: <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P246651>.

<sup>5</sup> The consultation materials may be found at: link: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD399.pdf>. Please see our client alert in relation to this consultation—Structured Thoughts: Volume 4, Issue 3 February 6, 2013—<http://www.mofo.com/files/Uploads/Images/130206-Structured-Thoughts.pdf>.

<sup>6</sup> The Consultation Report may be found at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD409.pdf>. Please see our client alert in relation to the Consultation Report—IOSCO Consultation Report on Financial Benchmarks, May 6, 2013—<http://www.mofo.com/files/Uploads/Images/130506-IOSCO-Consultation-Report-on-Financial-Benchmarks.pdf>.

<sup>7</sup> The Final Report may be found at: <http://www.fsa.go.jp/inter/ios/20130718-1/03.pdf>.

## Scope

In relation to submission-based benchmarks, where information is provided by third party submitters to the administrator (the entity which calculates, determines and disseminates the benchmark) to determine the benchmark, the definition of "Submission(s)" now explicitly excludes data sourced from regulated markets or exchanges with mandatory post-trade transparency requirements. This amendment was made in response to concerns that certain Principles were less relevant for benchmarks based on prices that are made public. Further, the Final Report amends Principle 14(g)(xi) to clarify that submissions from front office staff are allowed (under the draft Principles they were prohibited) but only if there are adequate internal oversight and verification procedures, including to address potential conflicts of interest. The potential for conflicts of interest and manipulation is considered to be increased when front office staff are involved with benchmark determination, but this amendment reflects the fact that smaller organisations may not be able to segregate staff accordingly and thus valuable market information may be lost by applying such an outright prohibition.

Principles 4 (Control Framework for Administrators), 5 (Internal Oversight) and 12 (Changes to the Methodology) now allow for summary information and key features to be disclosed to stakeholders (those who use or rely on benchmark determination services), rather than full disclosure being required. This amendment was made in response to a concern from benchmark providers that certain transparency practices should not apply to them as they have a strong incentive to disclose to stakeholders, with IOSCO's response being that a proportional application of such transparency Principles would be appropriate.

Principles 2 (Oversight of Third Parties) and 18 (Audit Trail) also relax certain requirements relating to benchmarks based on transactions in securities on regulated markets and exchanges in line with IOSCO's desire for a proportional application of the Principles. IOSCO reiterates in the Final Report that these Principles have been designed as a set of recommended practices and it does not expect a "one-size-fits-all" method of implementation. IOSCO highlights that there is an overarching theme of proportional application of the Principles depending on the size and risk posed by each benchmark and/or administrator and the benchmark-setting process.

The Final Report also excludes central counterparty risk management and settlement prices from the application of the Principles, since such central counterparties that are regulated already have to comply with stringent risk management and governance requirements.

## Use of Transaction Data

IOSCO highlights that a benchmark should be underpinned by an observable market consisting of *bona fide*, arms-length transactions, but introduces a clarification in the Final Report that a benchmark does not need to be constructed solely of transaction data, nor does transaction data carry more significance in the determination of a benchmark than non-transaction data. The Final Report recognises that in certain circumstances, such as in a low liquidity market, confirmed bids or offers may carry more meaning than an outlier transaction. Further, the Final Report states that non-transactional data can be used to determine benchmarks in relation to certain indices which are not designed to represent transactions, as long as data is derived from, and thus "anchored" in, a transparent, active market.

## Transparency of Benchmark Determination and Expert Judgment

The final Principles include a new Principle 9 (Transparency of Benchmark Determinations) which recommends that benchmark administrators should provide a concise explanation of how a benchmark has been determined, including certain minimum information such as the size and liquidity of the market being assessed, the pricing methodology and the extent to which any "expert judgment" (discretion in data selection and modification) was used.

Annex C of the Final Report provides further guidance on Principle 9, stating that its focus is to provide stakeholders with sufficient information to understand how a benchmark is determined. The guidance highlights that benchmarks that regularly publish their methodologies would comply with this Principle when they are derived from data sourced from regulated markets or exchanges with mandatory post-trade transparency requirements. Further, a benchmark that is based exclusively on executable quotes would not need to explain in each determination why it has not used transaction data, provided that it includes the requisite disclosure in its published rules and procedures.



## Next Steps

IOSCO has called on benchmark administrators to publicly disclose their compliance with the Principles within 12 months, and stated that it intends to review the extent to which the principles have been implemented within 18 months. IOSCO will also consider the need in due course for any modification of the Principles for Oil Price Reporting Agencies<sup>8</sup>, which it adopted in October 2012<sup>9</sup> and took into consideration when developing the Principles.

## Protect Your Elders, Part II

In recent years, the SEC and FINRA have been focusing on market practices related to the sale of complex products to senior citizens.<sup>10</sup> Some state securities regulators have also expressed similar concerns. On July 10, 2013, the Massachusetts Securities Division issued a press release indicating that it had issued subpoenas to 14 broker dealers.<sup>11</sup> The subpoenas requested information concerning the firms' sales of alternative investment products to seniors in Massachusetts. These investment products include "REITs, oil and gas partnerships, [Rule] 506 private placements, structured products, tenancy-in-common" and other non-traditional securities.

In the press release, Secretary of the Commonwealth William F. Galvin indicated that these products are not unsuitable in and of themselves. However, he expressed his concern over their sale to inexperienced investors by untrained agents who are eager to make the sales, and to obtain the higher commissions that may be associated with these products.

This is not the first time that Secretary Galvin's office has focused on the sale of complex products. In 2012, his office issued guidance in connection with retail sales of structured products.<sup>12</sup> In addition to fair and balanced disclosures, the guidance requires that the sale must meet customer-specific suitability requirements. The guidance is at least in part a result of concern over "a large number of transactions to elderly customers." In addition, in previous settlements with five broker-dealers for improper sales of REITs to seniors, his office enabled Massachusetts investors to receive compensation of over \$11 million.<sup>13</sup> In 2011, his office obtained a consent agreement regarding improper sales of non-traditional ETFs to certain Massachusetts investors, which required a broker-dealer to reimburse those investors for their losses and to pay a fine of \$250,000.<sup>14</sup>

Suitability is a principal issue associated with the sale of complex products. Market participants, of course, should be aware that a variety of regulators may scrutinize their recommendations when structured and other products are sold to senior citizens.

## "Retailisation" of Structured Products in the EU

In early July, the European Securities and Markets Authority (ESMA) published an Economic Report discussing the sale of complex financial products, including UCITs focused on alternative investment strategies and structured products, to retail investors. The report analyzes whether unexpected losses in relation to these products could reasonably be expected to lead to complaints, reputational damage, or a loss of confidence in the integrity of the financial markets.

<sup>8</sup> FR06/12 Principles for Oil Price Reporting Agencies, Report of the Board of IOSCO, October 2012, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf>.

<sup>9</sup> IOSCO developed the Principles for Oil Price Reporting Agencies in collaboration with the International Energy Agency, the International Energy Forum and the Organization of Petroleum Exporting Countries.

<sup>10</sup> We have addressed this development in a prior issue of Structured Thoughts. See <http://www.mofo.com/files/Uploads/Images/130515-Structured-Thoughts.pdf>.

<sup>11</sup> For full text of the press release, see <http://www.mofo.com/files/Uploads/Images/130710-Secretary-Galvin-Begins-Investigatory-Sweep-of-the-Sales-of-High-Risk-Alternative-Investments-to-Seniors.pdf>.

<sup>12</sup> See <http://www.sec.state.ma.us/sct/sctguidance/guidance.pdf>.

<sup>13</sup> See the press release, at 11.

<sup>14</sup> See <http://www.mofo.com/files/Uploads/Images/120530-Structured-Thoughts.pdf>.

The report recommends that, given the complexity of certain products, disclosures be improved to include a higher degree of transparency regarding the total costs, including embedded costs, and more detailed information regarding specific product risks, with quantification. The study provides useful survey information on market trends, including market size, growth, and type of product offered. The study assesses the intrinsic value of a sampling of structured products using various pricing models. The study also analyzes the returns on a sampling of nearly 3,000 principal-protected structured products.

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## FINRA FAQ on TRACE Reporting and Variable Price Reofferings

On August 1, 2013, FINRA issued a new set of FAQs relating to its TRACE system.<sup>15</sup> In one question, FINRA stated that a firm commitment from a broker-dealer or a customer to purchase a new issue debt security when it is issued, prior to a final pricing or determination of the final material terms of the new issue, does not constitute a transaction that must be reported to TRACE.

Citing FINRA Rule 6710(d), FINRA stated that, for purposes of TRACE trade reporting, the “time of execution” for a TRACE-eligible security occurs when the parties have a “meeting of the minds” regarding the material terms of the transaction. Material terms include price, coupon and quantity of the security, without which there can be no time of execution and, therefore, no requirement to report the firm commitment to TRACE.

FINRA’s advice appears to apply in the context of a variable price reoffering, where a dealer receives various firm commitments to purchase a security at varying prices within a range of public offering prices and underwriting discounts previously disclosed to investors. In these offerings, the aggregate principal amount of the offering is typically not known until the end of the marketing period. Accordingly, a TRACE report would not have to be filed until all of the commitments in the variable price reoffering have been made, and the aggregate principal amount has been determined.

The FAQ also reminds underwriters of these offerings that they should be clear in their communications regarding the final terms of the trade and how those terms will be conveyed between the parties.

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## FINRA Postpones Rule Requiring Disclosure of Enhanced Compensation

FINRA has postponed finalizing its Proposed Rule requiring disclosure of enhanced compensation relating to recruitment of investment advisors, which had been scheduled for discussion on July 11, 2013.<sup>16</sup> The Proposed Rule seeks to inform customers about investment advisors’ conflicts of interest when the advisors receive compensation in connection with their recruitment to new member firms.<sup>17</sup> According to FINRA spokesperson Nancy Condon, FINRA postponed consideration of the Proposed Rule due to scheduling issues.<sup>18</sup> Given FINRA’s recent focus on conflicts of interest in the financial services industry, it appears likely that the regulator will eventually consider the Proposed Rule, perhaps with some revisions.<sup>19</sup>

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<sup>15</sup> The new FAQ can be found at <http://www.finra.org/Industry/Regulation/Notices/2013/P314035>.

<sup>16</sup> See <http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P292644>.

<sup>17</sup> For our summary of the Proposed Rule, see <http://www.mofo.com/files/Uploads/Images/130116-Structured-Thoughts.pdf>. The Proposed Rule is available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/industry/p197601.pdf>.

<sup>18</sup> See <http://m.investmentnews.com/article/20130708/FREE/130709950?template=mobileart>.

<sup>19</sup> See <http://www.mofo.com/files/Uploads/Images/120814-FINRA-Conflicts-of-Interest.pdf>.

## iShares Changes Names of Widely Used ETFs

BlackRock has changed the names of many of its iShares Exchange Traded Funds (“ETFs”) effective July 1, 2013. A complete list of the iShares name changes is available at: <http://investwithanedge.com/ishares-name-changes>. However, BlackRock did not change the applicable ticker symbols, and the holdings and investment strategies of these ETFs will not change as a result of the name change.

Some of the name changes seek conformity between the iShares ETFs (such as changing the words “Index Fund” and “Fund” to “ETF”). Other name changes create future flexibility for iShares by removing the index provider identifiers (such as “Dow Jones,” “S&P” and “FTSE”).

Generally, the changes result in shorter and simpler names for the ETFs. It remains to be seen whether removing the name of the underlying index from an ETF’s name may obfuscate a bit the basis for an ETF’s investment strategy.

The following are examples of the iShares ETF name changes:

Ticker	Old Name	New Name
EEM	iShares MSCI Emerging Markets Index Fund	iShares MSCI Emerging Markets ETF
EFA	iShares MSCI EAFE Index Fund	iShares MSCI EAFE ETF
FXI	iShares FTSE China 25 Index Fund	iShares China Large-Cap ETF
IWM	iShares Russell 2000 Index Fund	iShares Russell 2000 ETF
IYR	iShares Dow Jones U.S. Real Estate Index Fund	iShares U.S. Real Estate ETF

Providers of structured notes, structured CDs, derivatives and other instruments linked to these ETFs will wish to review their documentation to ensure that they reflect the new names.

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Morrison & Foerster named **Structured Products Firm of the Year, Americas, 2012** by *Structured Products* magazine for the fifth time in the last eight years. See the write up at <http://www.mofo.com/files/Uploads/Images/120530-Americas-Awards.pdf>.

Morrison & Foerster named **Best Law Firm in the Americas, 2012, 2013** by *StructuredRetailProducts.com*.

Morrison & Foerster named **Legal Leader, 2013** by *mtn-i* at their Americas Awards. Two of our 2012 transactions were also granted awards of their own as a result of their innovation.

**About Morrison & Foerster**

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