



Insured Retirement Institute

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Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Via email: pubcom@finra.org

Re: Regulatory Notice 17-06 – Communications with the Public

Dear Ms. Asquith:

The Insured Retirement Institute (“IRI”)¹, on behalf of its members, appreciates the opportunity to comment on the Financial Industry Regulatory Authority (“FINRA”) proposal to amend FINRA Rule 2210 (Communications with the Public), as described in Regulatory Notice 17-06 (the “Regulatory Notice”). For the reasons outlined below, IRI supports the proposed amendment.

The proposed amendment allows consumers to obtain a customized hypothetical investment planning illustration, subject to all existing FINRA restrictions. As noted by the Regulatory Notice, the proposal would be valuable for consumers because it allows certain types of consumers to obtain more information prior to committing to investment strategies. This proposed amendment would benefit consumers seeking brokerage accounts because it would allow them to obtain projection information that previously was only available to investment advisory consumers. By providing both brokerage and advisory consumers with reasonably likely outcomes of investment strategies, the proposed amendment grants more flexibility to the industry, though again, subject to existing FINRA restrictions.

¹ IRI is the only national trade association that represents the entire supply chain of the retirement income industry. IRI has more than 500 member companies, including major life insurance companies, broker-dealers, banks, and asset management companies. IRI member companies account for more than 95 percent of annuity assets in the United States, include the top 10 distributors of annuities ranked by assets under management, and are represented by more than 150,000 financial professionals serving over 22.5 million households in communities across the country.

The proposed amendment will be mutually beneficial to the industry and consumers. Because it is consistent with the Investment Advisers Act, it would allow dually registered firms to use the same internal compliance mechanisms for brokerage and advisory clients. This proposed amendment appears uncontroversial for all parties involved, especially considering the benefits generated for clients, who would be empowered to better identify investment outcomes.

IRI and its members agree with several points made in the Regulatory Notice. First, the Regulatory Notice identified “historical performance” as a reasonable basis for performance projections. We agree that this would constitute an appropriate factor. Additionally, our members have indicated that, while there are costs associated with the proposed amendment, by way of registered principal “review and approval,” no other substantial identifiable costs exist related to the amendment’s adoption. Finally, we cannot identify any alternative approaches to this amendment that are as well suited to achieving similar goals.

IRI supports the proposed amendment, but respectfully requests that FINRA clarify a possible inconsistency between the proposed amendment and FINRA Rule 2214 (Investment Analysis Tool). The proposed amendment’s complete prohibition on projections of individual securities may not be entirely consistent with the practical applications of FINRA Rule 2214. In practice, the Investment Analysis Tool from Rule 2214 allows FINRA members to show likely outcomes for certain investments, including individual securities, when displayed as part of an asset allocation strategy. However, the proposed amendment would disallow *any* projections of individual securities and purports to prohibit existing asset allocation projection practices.

Put differently, FINRA Rule 2214 allows FINRA members to produce simulations of investment outcomes “if certain investments are made or certain investment strategies or styles are undertaken”, which helps consumers evaluate risk. The implication from this language is that a FINRA member can demonstrate the likelihood of outcomes for certain investments. However, the proposed amendment states that a FINRA member may show consumers the “projected performance of an asset allocation or other investment strategy, but *not an individual security*.” FINRA should provide more clarity on whether specific securities included in an asset allocation can be shown to consumers, so firms can properly comply.

IRI also believes FINRA should consider expanding the proposed amendment to permit firms to provide their clients with non-customized asset allocation projections based on firm capital market assumptions. Such information, when accompanied by appropriate disclosures, will help investors gauge current and potential future risk, and better understand potential risks associated with their portfolio and their investment strategy.

The Regulatory Notice poses several questions and we would like to briefly respond to two of the questions that we have not yet addressed.

1. The Regulatory Notice asks about the existence of any “single investment products that operate like an asset allocation or other investment strategy for which performance projection might be appropriate.” Our members have suggested that target date funds operate like an asset allocation and may be appropriate for a performance projection.

2. The Regulatory Notice also asks whether “requiring a range of projections...could make the hypothetical nature of a performance projection more apparent.” We do not recommend a requirement that consumers be provided a range of projections in a customized hypothetical investment planning illustration. Consumers will likely have the ability to identify suitable investment strategies using a single projection. Because the purpose is to provide consumers with projections of the most reasonably likely outcome, we believe that providing multiple projections would be confusing to consumers.

We appreciate the opportunity to present our members’ views on the proposed amendment to FINRA Rule 2210, and we hope you will consider the issues we have raised in this letter. Please feel free to contact me if IRI can provide additional information or to further discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Berkowitz", written over a faint, light-colored signature line.

Jason Berkowitz
Vice President & Counsel, Regulatory Affairs
Insured Retirement Institute