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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2026 - * 004

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pilot	Extension of Time Period for Commission Action *	Date Expires *	Rule		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(2)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(5)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934		
Section 806(e)(1) *		Section 806(e)(2) *	Section 3C(b)(2) *		
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Ilana	Last Name *	Reid
Title *	Associate General Counsel		
E-mail *	ilana.reid@finra.org		
Telephone *	(202) 728-8268	Fax	

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/10/2026

(Title *)

By Joseph Savage

(Name *)

Vice President & Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally signed by Joseph Savage
Date: 2026.02.10 13:56:32
-05'00'

Joseph Savage

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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FINRA-2026-004 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2026-004 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

FINRA-2026-004 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act,” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 2210 (Communications with the Public). Currently, Rule 2210 prohibits projections of performance or targeted returns in member communications, subject to specified exceptions. The proposed rule change would allow a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions to ensure these projections are carefully derived from a sound basis.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors has authorized the filing of the proposed rule change with the SEC; no other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the rule change in a Regulatory Notice.

¹ 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule 2210's General Prohibition of Projections and Its Exceptions

Rule 2210 provides that communications² may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.³ The general prohibition against performance projections is intended to protect investors who may lack the capacity to understand the risks and limitations of using projected performance in making investment decisions.

This general prohibition has some exceptions, however. First, Rule 2210 allows a hypothetical illustration of mathematical principles, provided it does not predict or project the performance of an investment or investment strategy.⁴ The “hypothetical illustration of mathematical principles” exception to the prohibition of projections applies to tools that serve the function of a calculator that computes the mathematical

² “Communications” consist of correspondence, retail communications, and institutional communications. See Rule 2210(a)(1). Correspondence means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period. Rule 2210(a)(2). Retail communication means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(a)(5). Institutional communication means any written (including electronic) communication that is distributed or made available only to institutional investors but does not include a member’s internal communications. Rule 2210(a)(3). Rule 2210(a) defines each of these three communication types as communications that are “distributed or made available” to investors, with the definitions varying based on the specific audience and number of investors to whom the communication is distributed or made available.

³ See Rule 2210(d)(1)(F).

⁴ See Rule 2210(d)(1)(F)(i).

outcome of certain assumed variables without predicting the likelihood of either the assumed variables or the outcome. For example, this exception applies to a calculator that computes a net amount of savings that an investor would earn over an assumed period of time with assumed variables of rates of returns, frequency of compounding, and tax rates.⁵

Second, the general prohibition on projections does not preclude a member from employing an investment analysis tool, or a written report produced by an investment analysis tool, that includes projections of performance provided it meets the requirements of Rule 2214 (Requirements for the Use of Investment Analysis Tools).⁶ FINRA adopted the predecessor to Rule 2214 in 2004 to allow members to offer or employ technological tools that use a mathematical formula to calculate the probability that investment outcomes (such as reaching a financial goal) would occur.⁷

An “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.⁸ Investors may use an investment analysis tool either independently or with assistance from a member, and investors may

⁵ On the other hand, this exception would not apply to a calculator that predicted the likelihood of achieving these assumed variables and outcomes. See Notice to Members 04-86 (November 2004), n.3.

⁶ See Rule 2210(d)(1)(F)(ii).

⁷ See Notice to Members 04-86, supra note 5.

⁸ See Rule 2214(b).

receive written reports generated by the tool that include projected performance that is consistent with Rule 2214's requirements.⁹

Third, members may include a price target in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by a disclosure concerning risks that may impede achievement of the price target.¹⁰

In addition, a communication with the public regarding security futures or options may contain projected performance figures (including projected annualized rates of return), provided that the communication meets specified requirements.¹¹ Among other things, the communication must be accompanied or preceded by a standardized risk disclosure statement, the communication may not suggest certainty of the projected performance, parameters relating to such performance figures must be clearly established, and the projections must disclose and reflect all relevant costs, commissions, fees, and interest charges (as applicable).¹²

Need for an Additional Exception

Based on feedback received during a retrospective rule review from members and FINRA's advisory committees, comments on a prior proposed rule change that would

⁹ For a more detailed discussion of the differences between Rule 2214 and the proposal, see Comparison to Projections Permitted by Rule 2214, infra.

¹⁰ See Rule 2210(d)(1)(F)(iii).

¹¹ See Rules 2215 (Communications with the Public Regarding Security Futures) and 2220 (Options Communications).

¹² See Rules 2215(b)(3) and 2220(d)(3).

have allowed projections of performance and targeted returns,¹³ and FINRA’s experience with the rules, FINRA determined that an additional exception to the general prohibitions on projections in member communications is warranted. FINRA understands that some broker-dealer customers, including institutional and other sophisticated investors, request other types of projected performance that the current rules do not allow.¹⁴ These customers, in particular, may request information that includes projections of performance or targeted returns concerning investment opportunities to help them make informed investment decisions but are unable to receive this information from members due to the prohibition on projections. For example, a member’s views regarding the projected performance of an investment strategy or single security may be particularly useful to investors who are eligible to invest in certain non-public offerings that are relying on exceptions from registration under the Securities Act of 1933 (“Securities Act”) and, with respect to private funds, exclusions from the definition of “investment company” under the Investment Company Act of 1940 (“ICA”).

In addition, projected performance may be useful when investors either have the financial expertise to evaluate investments and to understand the assumptions and limitations associated with such projections or have resources that provide them with access to financial professionals who possess this expertise. Such investors often test their own opinions against performance projections they receive from other sources,

¹³ See discussion of previous proposals, infra; see also infra note 28 (comparison of projections to targeted returns).

¹⁴ See Regulatory Notice 14-14 (April 2014); see also Retrospective Rule Review Report: Communications with the Public (December 9, 2014), <https://www.finra.org/rules-guidance/guidance/reports/communications-public>.

including issuers and investment advisers. Because Rule 2210 generally precludes a member from providing projected performance or targeted returns in communications, these investors cannot obtain a member’s potentially different and valuable perspective. Moreover, because registered investment advisers (“RIAs”) are permitted to provide investors with this type of performance information, subject to the conditions in the SEC’s rule governing investment adviser marketing¹⁵ (“IA Marketing Rule”) under the Investment Advisers Act of 1940 (“Advisers Act”),¹⁶ Rule 2210’s prohibition on projections can lead to investor confusion, as it results in investors receiving different information about the same investments depending on the financial professional with whom they engage.

Previous Proposals

FINRA has previously pursued rulemaking to address the regulatory need for an exception to the general prohibition on members projecting performance in their communications. In February 2017, FINRA published Regulatory Notice 17-06 (the “Notice”), requesting comment on proposed amendments that would have created an exception to the rule’s prohibition on projecting performance to permit members to distribute customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified conditions.¹⁷ Among other things, commenters

¹⁵ See Investment Advisers Act Release No. 5653 (December 22, 2020), 86 FR 13024 (March 5, 2021) (adoption of Investment Advisers Act of 1940 Rule 206(4)-1 (Investment Adviser Marketing)) (“IA Marketing Rule Release”).

¹⁶ See 15 U.S.C. 80b-1 et seq.

¹⁷ See Regulatory Notice 17-06 (February 2017).

responding to the Notice urged FINRA to revise the proposal to permit projections of performance of single securities, particularly for communications to sophisticated investors, including qualified purchasers.¹⁸

In response to comments to that Notice, FINRA’s experience with the rule, and in light of the Commission’s adoption of the IA Marketing Rule, FINRA shifted its approach and filed a proposed rule change with the Commission on November 13, 2023 (the “November 2023 rule change”).¹⁹ The November 2023 rule change, as amended,²⁰ would have created an exception from Rule 2210’s general prohibition on performance projections to allow a member, when conditions were met, to project the performance or provide a targeted return with respect to a security or asset allocation or other investment strategy in communications to specified sophisticated investors. A member would have been permitted to provide performance projections or targeted returns only in: (1) an institutional communication; or (2) a communication that is distributed or made available only to: (a) persons meeting the definition of “qualified purchaser” under the ICA and that promotes or recommends a Member Private Offering that is exempt from the requirements of Rule 5122 pursuant to Rule 5122(c)(1)(B); or (b) persons meeting the

¹⁸ FINRA received 23 comments in response to Regulatory Notice 17-06. Twenty-one commenters supported the proposal, and two commenters opposed the proposal. For a full discussion addressing the comments to Regulatory Notice 17-06, see Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

¹⁹ See Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

²⁰ See Securities Exchange Act Release No. 99588 (February 22, 2024), 89 FR 14728 (February 28, 2024) (Notice of Filing Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2023-016)).

definition of “qualified purchaser” under the ICA or “knowledgeable employee” under ICA Rule 3c-5 and that promotes or recommends a private placement that is exempt from the requirements of Rule 5123 pursuant to Rules 5123(b)(1)(B) or 5123(b)(1)(H).

In addition to this general limitation on the types of investors who would have been eligible to receive communications with projections or targeted returns, the November 2023 rule change also would have imposed specified conditions on members that choose to provide such communications. The exception to the general prohibition on the use of projections would have been conditioned on: (1) the member adopting and implementing written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations; (2) the member having a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retaining written records supporting the basis for these criteria and assumptions; (3) the communication prominently disclosing that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projected or targeted performance will be achieved; and (4) the member providing sufficient information to enable the investor to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.

During the rulemaking process, many commenters urged FINRA to align the rule more closely with the IA Marketing Rule, including by eliminating the threshold limitation on investors who could receive projections from broker-dealers and allowing projections and targeted returns for a wider range of investors.²¹ FINRA responded to comments to the November 2023 rule change and, at that time, determined not to significantly broaden the scope of the investors who could receive projections under that rule change.²²

On February 22, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the November 2023 rule change.²³ On July 19, 2024, the Division of Trading and Markets, for the Commission pursuant to delegated authority,²⁴ approved the November 2023 rule change, as modified by Partial Amendment No. 1.²⁵ On July 26, 2024, the Deputy Secretary of the Commission notified FINRA that, pursuant to Rule 431 of the Commission's Rules of Practice,²⁶ the Commission would review the Delegated Order

²¹ For a full discussion of the comments received to the November 2023 rule change and FINRA's response, see Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (summarizing and responding to comments to File No. SR-FINRA-2023-016).

²² See supra note 21.

²³ See supra note 20.

²⁴ 17 CFR 200.30-3(a)(12).

²⁵ See Securities Exchange Act Release No. 100561 (July 19, 2024), 89 FR 60461 (July 25, 2024) (Order Approving File No. SR-FINRA-2023-016) ("Delegated Order").

²⁶ 17 CFR 201.431.

and that the Delegated Order was stayed until the Commission ordered otherwise.²⁷

FINRA has had the opportunity to further consider the need for an exception to the general prohibition on projections of performance in member communications, as well as the comments in response to the November 2023 rule change. FINRA has determined that further alignment with the IA Marketing Rule's provisions governing hypothetical performance will help investors, including by reducing investor confusion and enabling them to receive additional information when making investment decisions, and increase regulatory harmonization while maintaining investor protection safeguards. If the Commission approves the proposed rule change, FINRA intends to withdraw the stayed November 2023 rule change.

Proposed Amendments

The proposed rule change would create a new, narrowly tailored, exception to the general prohibition of projections for a communication that projects performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy when members meet specified conditions. The exception would be conditioned on: (1) the member adopting and implementing written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication; (2) the member having a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and

²⁷ See Letter from J. Matthew DeLesDernier, Deputy Secretary, SEC, to Meredith Cordisco, Associate General Counsel, FINRA, dated July 26, 2024, <https://www.sec.gov/files/rules/sro/finra/2024/letter-regarding-sr-finra-2023-016.pdf>.

retaining written records supporting the basis for such criteria and assumptions;²⁸ and (3) the member providing sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.²⁹

Written Policies and Procedures

The proposed rule change would require a member to adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication.³⁰ The proposed rule change does not prescribe the ways in which a member may satisfy the policies and procedures requirement, including how the member will establish that the policies and procedures are reasonably designed to

²⁸ FINRA recognizes that there may be some differences between targeted returns and projections of performance, depending on the circumstances. Targeted returns are aspirational and may be used as a benchmark or to describe an investment strategy or objective to measure the success of a strategy. Projections of performance, on the other hand, use historical data and assumptions to predict a potential return. Thus, targeted returns may not involve all (or any) of the assumptions and criteria applied to generate a projection. Because the intended audience of a communication may not always understand or appreciate the differences between targeted returns and projections of performance, both would be subject to the same conditions, including that they must have a reasonable basis.

²⁹ See proposed Rule 2210(d)(1)(F)(iv).

³⁰ See proposed Rule 2210(d)(1)(F)(iv)a.

ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. Instead, this condition is intended to provide members with the flexibility to develop policies and procedures that best suit their investor base and the business in which they engage. A member could meet the proposed rule change's requirement to adopt and implement policies and procedures reasonably designed to ensure that the projected performance or targeted returns are relevant to the likely financial situation and intended audience by, for example, adopting and implementing written policies and procedures that are based in part on the member's past experiences with particular types of investors who seek this information. A member may wish to further tailor its intended audience for such a communication to persons or entities that have expressed interest in particular types of securities, or who have invested in similar securities in the past.

Reasonably designed policies and procedures need not address each recipient's particular circumstances; rather, a member's policies and procedures may account for the grouping of investors into categories or types based on the member's reasonable judgment as to the likely investment objectives and financial situation of that investor category that is the intended audience of a communication.

A communication that contains projections of performance or targeted returns should only be distributed, however, where the member reasonably believes the investors for whom that communication is intended have the financial expertise and resources to understand the risks and limitations of such presentations.³¹ Under the proposed rule

³¹ FINRA would not view the mere fact that an investor would be interested in high returns as satisfying the requirement that the projected performance or targeted

change, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general retail investor audience. In the case of communications available to mass audiences, a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience.

To the extent that a member makes this determination with respect to particular retail investors to whom it is recommending a securities transaction or investment strategy involving securities, the Exchange Act's Regulation Best Interest ("Reg BI")³² would further protect retail investors, as it requires a broker-dealer to act in a retail customer's best interest when making such recommendations³³ and to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.³⁴

This condition in the proposed rule change is substantially similar to a condition governing RIAs' use of hypothetical performance in the IA Marketing rule.³⁵

return is relevant to the likely financial situation and investment objectives of the intended audience.

³² 17 CFR 240.15l-1.

³³ See 17 CFR 240.15l-1(a)(1).

³⁴ See 17 CFR 240.15l-1(a)(2)(iv). Reg BI defines "retail customer" to mean a natural person, or the legal representative of such natural person, who (i) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or natural person who is an associated person of a broker or dealer, and (ii) uses the recommendation primarily for personal, family, or household purposes. See 17 CFR 240.15l-1(b)(1).

³⁵ See 17 CFR 275.206(4)-1(d)(6)(i).

Specifically, the IA Marketing Rule conditions RIAs' use of hypothetical performance in investment adviser advertisements on, among other conditions, the investment adviser adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement. FINRA anticipates that it would interpret requirements in the proposed rule change that align with similar requirements in the IA Marketing Rule's condition consistently with how the Commission has interpreted those IA Marketing Rule requirements.³⁶

Reasonable Basis Requirement

In order to include projections of performance and targeted returns in a communication, a member must have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return and retain written records supporting the basis for such criteria and assumptions.³⁷ The reasonable basis requirement is foundational and follows well-established precedents. For example, Rules 2210 and 2241 (Research Analysts and Research Reports) require a price target in a research report to have a reasonable basis.³⁸ SEC rules also require performance

³⁶ Neither FINRA's November 2023 rule change nor the current proposed rule change interprets the Commission's IA Marketing Rule, and nothing in this proposed rule change should be construed as impacting the application or interpretation of the SEC's rule.

³⁷ See proposed Rule 2210(d)(1)(F)(iv)b.

³⁸ See Rule 2210(d)(1)(F)(iii) and Rule 2241(c)(1)(B).

projections contained in specified documents to be based on good faith and have a reasonable basis.³⁹

FINRA notes that the proposed rule change does not prescribe the manner in which the member forms its reasonable basis, nor does it require members, or third parties whose projections or targeted returns appear in member communications, to adopt a prescribed methodology in creating these projections. Like in other contexts where a broker-dealer must form a reasonable basis, the factors a member considers when forming its reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns would depend on the facts and circumstances.⁴⁰

Nevertheless, FINRA believes that it is important for members to consider appropriate factors in forming a reasonable basis for the criteria used and assumptions made in calculating projected performance or a targeted return pursuant to proposed Rule 2210(d)(1)(F)(iv). These factors may include, for example, such considerations as: global, regional, and country macroeconomic conditions; in the case of a single security issued by an operating company, the issuing company's operating and financial history; the industry's and sector's current conditions and the stage of the business cycle; the

³⁹ See Securities Act Regulation S-K, 17 CFR 229.10(b) (providing in part that the use in documents specified in Securities Act Rule 175 and Exchange Act Rule 3b-6 of management's projections of future economic performance have a reasonable basis and reflect its good faith assessment of a registrant's future performance).

⁴⁰ See, e.g., Regulation Best Interest, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33378 (July 12, 2019) (discussing that the relevance of factors to consider when forming a reasonable basis under the Reg BI Care Obligation will depend on the facts and circumstances); IA Marketing Rule Release, 86 FR 13024, 13053 (noting that what would constitute a reasonable basis for an investment adviser's belief that a testimonial or endorsement in investment adviser advertisements complies with the requirements of the IA Marketing Rule would depend upon the facts and circumstances).

quality of the assets included in a securitization; and the appropriateness of selected peer-group comparisons.⁴¹ While these examples may be relevant, this list is not meant to be prescriptive or exhaustive. Additional or different factors could be pertinent depending on the particular security and the anticipated use of projected performance or targeted returns.

In addition, FINRA expects members to establish and maintain a supervisory system to achieve compliance with the reasonable basis standard.⁴² Before presenting projected performance or a targeted return, a member should determine whether its existing written supervisory procedures are reasonably designed to ensure that the criteria used and assumptions made in calculating the projected performance or targeted return have a reasonable basis.

Disclosure Requirements

The requirement to provide sufficient information in the communication to enable the intended audience to understand the criteria used and assumptions made in calculating the projected performance or targeted return is not intended to prescribe any particular methodology or calculation of such performance.⁴³ Nor does FINRA expect a firm to disclose proprietary or confidential information regarding the firm's methodology and criteria. Members would be expected, however, to provide a general description of the

⁴¹ See, e.g., CFA Institute, Standards of Practice Handbook (12th ed. 2024), at page 129-30 (requiring, among other things, that CFA Institute Members and Candidates “[h]ave a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.”).

⁴² See FINRA Rule 3110(a).

⁴³ See proposed Rule 2210(d)(1)(F)(iv)c.(i).

methodology used sufficient to enable the investors to understand the basis of the methodology, as well as the assumptions underlying the projection or targeted return. Without this basic information, particularly regarding assumptions about future events, it is more likely that a projection or targeted return would mislead a potential investor.

The proposed rule change also would require a member to provide sufficient information in the communication to enable an investor to understand the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.⁴⁴ This requirement is intended to help ensure that such investors do not unreasonably rely on a projection or targeted return given its uncertainty and risks.

General Standards and Supervision under Rule 2210

As with all communications with the public, member communications that contain projected performance or targeted returns must meet Rule 2210's general standards, including the requirements that communications be fair and balanced, provide a sound basis for evaluating the facts in regard to any particular security or type of security, and not contain false, exaggerated, unwarranted, promissory or misleading content.⁴⁵ Accordingly, in addition to the reasonable basis standard, any communication containing a projection or targeted return would be prohibited from presenting exaggerated or unwarranted projections or targeted returns.

⁴⁴ See proposed Rule 2210(d)(1)(F)(iv)c.(ii).

⁴⁵ See Rule 2210(d)(1)(A) and (B).

Members currently must adopt appropriate procedures for the supervision and review of both institutional and retail communications.⁴⁶ If the proposed rule change is adopted, these supervisory procedures would need to include the review of projections of performance or targeted returns used in communications, including compliance with the proposed rule change's specific conditions. In addition, members generally would be required to approve, prior to use or filing, any communication that falls within Rule 2210's definition of "retail communication."⁴⁷

Members that use third-party vendors to perform core business or regulatory oversight functions must establish and maintain a supervisory system, including written supervisory procedures, for any activities or functions performed by third-party vendors that are reasonably designed to ensure compliance with applicable securities laws and regulations and with applicable FINRA rules.⁴⁸ Accordingly, if a member relies on third-party models or software to create a projection or targeted return, the member would be expected to establish and maintain a supervisory system reasonably designed to ensure that any projections or targeted returns created by a third-party vendor are used consistently with the proposed rule change's requirements.

For example, the member would need to obtain enough information to form a reasonable basis as to the third-party's assumptions and the underlying criteria and would need to retain written records supporting the basis for such criteria and assumptions. Members should make reasonable efforts to determine whether the model or software is

⁴⁶ See Rule 2210(b)(1) and (b)(3).

⁴⁷ See Rule 2210(b)(1).

⁴⁸ See Regulatory Notice 21-29 (August 2021).

sound and should make reasonable inquiries into the source and accuracy of the data used to create the projection or targeted return. If the member has reason to suspect that the third-party model or software lacks a sound basis, the member should investigate the matter and, if it cannot be reasonably assured that the model or software is sound, must not use it. Among factors that a member may wish to employ to evaluate the third-party model or software are the assumptions used to create the projection or target, the rigor of its analysis, the date and timeliness of any research used to create the model or software, and the objectivity and independence of the entity that created the model or software.

As discussed above, members also must keep in mind that if they use a projection of performance or targeted return in connection with a recommendation of a securities transaction or investment strategy involving securities to a retail customer, the recommendation must meet the requirements of Reg BI.

Comparison to Projections Permitted by FINRA Rule 2214

There are several key differences between the types of projections that Rule 2214 permits as compared to those that the proposed rule change would allow. First, Rule 2214 differs from the proposed rule change in terms of how a projection may be communicated. Rule 2214 allows a projection of performance that is created by an investment analysis tool that any retail customer uses on a one-on-one interactive basis, either independently or with a member's assistance, and that provides individualized results to each user. In contrast, unlike Rule 2214, the proposed rule change does not mandate an interactive element associated with the delivery of projections. Instead, firms could provide projections or targeted returns to investors using any form of

communication that otherwise complies with the proposed rule change, applicable requirements of FINRA rules, and the federal securities laws.

Second, Rule 2214 requires the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies are undertaken. Although the rule does not expressly require the use of a particular type of statistical analysis, in many cases firms (or their vendors) use Monte Carlo simulations for this process.⁴⁹ In contrast, the proposed rule change would not require communications to investors that include performance projections or targeted returns to consider potential returns under various scenarios and the probability of success for each scenario.

Third, Rule 2214's disclosure requirements differ somewhat from those under the proposed rule change. Rule 2214 requires an investment analysis tool, a written report generated by the tool, or a related retail communication to:

- Describe the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;
- explain that results may vary with each use and over time;

⁴⁹ Monte Carlo simulation involves the use of a computer to represent the operations of a complex financial system. A characteristic feature of Monte Carlo simulation is the generation of a large number of random samples from specified probability distributions to represent the operation of the system. Monte Carlo simulation is used in planning in financial risk management and in valuing complex securities. Monte Carlo simulation is a complement to analytical methods but provides only statistical estimates, not exact results. See CFA Institute, Common Probability Distributions (CFA Program Level I, 2023 Curriculum), available at <https://www.cfainstitute.org/membership/professional-development/refresher-readings/common-probability-distributions>.

- if applicable, describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, disclose if the tool favors certain securities and, if so, explain the reason for the selectivity, and state that other investments not considered may have characteristics similar or superior to those being analyzed; and
- display a prescribed disclosure concerning the hypothetical nature of the projections, that they do not reflect actual investment results, and that they are not guarantees of future results.⁵⁰

In contrast, the proposed rule change would require a member to provide “sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.”⁵¹

While the proposed rule change’s methodology disclosure requirement resembles the methodology disclosure requirements in Rule 2214, they are worded differently to reflect different types of communications to which the proposed rule change and Rule 2214 apply. For example, an investment analysis tool permitted by Rule 2214 may recommend that an investor consider an alternative account portfolio to improve the range of its potential returns but limit the securities that may populate the portfolio. This

⁵⁰ See Rule 2214(c).

⁵¹ See proposed Rule 2210(d)(1)(F)(iv)c.

limitation is important information to investors when considering whether to change their investments. In contrast, the proposed rule change may be more likely to apply to a projection or targeted return that is included in a communication promoting a single security or investment strategy and thus would impose different disclosure requirements relative to those scenarios.

Comparison to IA Marketing Rule's Hypothetical Performance Standards

As discussed above, the proposed rule change is generally consistent with the IA Marketing Rule, which permits investment advisers to present hypothetical performance in an advertisement if the investment adviser meets specified conditions and does not violate the IA Marketing Rule's other requirements.⁵²

The requirements of the IA Marketing Rule in many ways overlap with the proposed rule change's requirements, and FINRA anticipates that it would interpret requirements in the proposed rule change that align with similar requirements in the IA Marketing Rule consistently with how the Commission has interpreted those IA Marketing Rule requirements. Thus, member firms should be able to comply with these proposed requirements in a manner similar to how investment advisers must comply with similar requirements applicable to the use of hypothetical performance under the IA Marketing Rule.⁵³

In addition, similar to Rule 2210, the IA Marketing Rule generally requires advertisements to be fair and balanced and prohibits any advertisement that includes any

⁵² See 17 CFR 275.206(4)-1(d)(6).

⁵³ See IA Marketing Rule Release, 86 FR 13024, 13083-85.

untrue statement of a material fact or omits to state a material fact necessary to make the statement made under the circumstances not misleading.⁵⁴

While FINRA has endeavored to align, where appropriate, the conditions the SEC applies to hypothetical performance under its IA Marketing Rule, there are some differences. First, the scope of the type of performance covered in the proposed rule change is narrower than the relevant IA Marketing Rule provisions. In this regard, the relevant provision of the IA Marketing Rule addresses “hypothetical performance,” which includes performance derived from model portfolios; performance that is back-tested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to the securities offered.⁵⁵ The proposed rule change is intentionally narrower in that it includes only projections of performance and targeted returns. Targeted returns reflect the aspirational performance goals for an investment or investment strategy. Projections of performance reflect an estimate of the future performance of an investment or investment strategy, which is often based on historical data and assumptions. Projections of performance are commonly established through mathematical modeling.⁵⁶

Second, as noted above, the proposed rule change expressly requires a member to have a reasonable basis for the criteria used and assumptions made in calculating the

⁵⁴ See 17 CFR 275.206(4)-1(a).

⁵⁵ See 17 CFR 275.206(4)-1(e)(8).

⁵⁶ See IA Marketing Rule Release, 86 FR 13024, 13081 n.699 and accompanying text.

projected performance or targeted return and requires that the member retains written records supporting the basis for such criteria and assumptions. FINRA views this requirement as foundational; without forming a reasonable basis, a member's projections of performance and targeted returns could be based on guesswork, invalid presumptions, and misleading reasoning. Requiring a reasonable basis ensures that the member acts with reasonable diligence and good faith. While the SEC's IA Marketing Rule does not contain an express reasonable basis requirement in its provision governing hypothetical performance, the rule requires all RIA advertising to be fair and balanced and to meet other hypothetical performance standards.⁵⁷

Third, the proposed rule requires a member to disclose, as part of a projection's or targeted return's risks and limitations, the reasons why the projected performance or targeted return might differ from actual performance. By contrast, the IA Marketing Rule requires an RIA to provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the hypothetical performance and the risks and limitations of using such hypothetical performance in making investment decisions. FINRA believes it is important for investors to understand that projections and targeted returns may not accurately reflect how a product actually performs, including the reasons why this outcome may occur.

Comparison to November 2023 Rule Change

The current proposed rule change differs from the November 2023 rule change in several material ways. First, the current proposed rule change would better align with the IA Marketing Rule by eliminating the November 2023 rule change's threshold restriction

⁵⁷ See 17 CFR 275.206(4)-1(a)(1) through (a)(7).

on the categories of investors who would be eligible to receive projections and targeted return information in member communications. As noted above, the November 2023 rule change would have allowed members to use projections and targeted returns only in communications to specified sophisticated investors. The IA Marketing Rule has no such threshold limitation on the audience for these communications.⁵⁸ Instead, the IA Marketing Rule conditions the use of hypothetical performance on, among other conditions, the adviser adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience. The proposed rule change, like the IA Marketing Rule, will have substantially similar conditions, which will ensure that projections of performance and targeted returns are only made available to investors who have the financial expertise and resources to understand the risks and limitations of these types of presentations.

Second, the November 2023 rule change required a communication to prominently disclose that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projection of performance or targeted return will be achieved. Upon further reflection, FINRA believes that this disclosure requirement is unnecessary and potentially duplicative to the proposed rule change's

⁵⁸ The IA Marketing Rule imposes conditions based on the "intended audience" of an investment adviser advertisement. In this regard, the IA Marketing Rule Release states that "[w]e intend for advertisements including hypothetical performance information to only be distributed to investors who have access to resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations." See IA Marketing Rule Release, 86 FR 13024, 13078.

requirement to provide sufficient information to enable the intended audience to understand the limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance. Accordingly, the proposed rule change, like the IA Marketing Rule’s provisions, would not require this affirmative disclosure.

Third, the November 2023 rule change proposed, as Supplementary Material to the proposed rule text, factors that a member should consider when forming its reasonable basis.⁵⁹ While FINRA intended that information to be guidance, several commenters raised questions about these factors or their utility. In response, FINRA emphasized that members have flexibility when forming their reasonable basis for projections and targeted returns. The factors listed in the previously proposed Supplementary Material were intended to be helpful guidance, not prescriptive requirements or a check-the-box exercise.⁶⁰ To avoid confusion, however, FINRA has removed the Supplementary Material, including its factors, from the current proposed rule text. Nevertheless, members would be free to consider those, as well as other factors, when making their reasonable basis determinations.

Fourth, the November 2023 rule proposal specifically prohibited members from basing projected performance or a targeted return upon hypothetical, back-tested

⁵⁹ See Delegated Order, 89 FR 60461, 60464-65.

⁶⁰ See Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (discussing comments regarding proposed Supplementary Material to November 2023 rule change, File No. SR-FINRA-2023-016).

performance or the prior performance of a portfolio or model that was created solely for the purpose of establishing a track record. The current proposed rule change does not contain these express prohibitions. While the proposed rule change would no longer expressly prohibit members from using back-tested performance as a factor in determining projected performance or a targeted return, members should keep in mind that the criteria used and assumptions made in calculating projected performance and targeted returns must have a reasonable basis, the communication must include appropriate disclosures, and the presentation of such performance must be fair and balanced.⁶¹

Contributions to Investor Protection

FINRA believes that approval of the proposed rule change would contribute to investor protection by enabling investors to access projections when considering specific investments or strategies, when the rule's safeguarding conditions are met. For example, under the current rule, investors are not permitted to receive projections from broker-dealers, despite the fact that such projections may assist them in evaluating potential securities purchases or sales, choosing appropriate investment strategies, or creating strategic plans for their business operations. Under the proposed rule change, investors

⁶¹ At least one study has shown that back-tested index performance data is not a reliable indicator of how an exchange-traded fund linked to the index will perform after it is launched. See Institutional Investor, Study Finds Many ETF Indexes Misleading, (August 29, 2012), <https://www.institutionalinvestor.com/article/2bsvknn823v5h6qgbq9z4/portfolio/study-finds-many-etf-indexes-misleading>. For further analysis concerning the reliability of using back-tested performance to predict future performance, see David H. Bailey, Jonathan M. Borwein, Marcos Lopez de Prado & Qiji Jim Zhu, Pseudo-Mathematics and Financial Charlatanism: The Effects of Backtest Overfitting on Out-of-Sample Performance, 61(5) Notices of the American Mathematical Society 458-471 (2014).

would have access to projected performance or targeted returns that must comply with Rule 2210's existing prohibition of false or misleading statements or claims and the proposed rule change's disclosure requirements. In addition, the proposed rule change would reduce confusion for investors who currently may receive differing information depending on the regulated nature of their intermediary (such as RIAs) or are prohibited from receiving information that could be useful to their investment decision-making process.

FINRA believes the proposed rule change also would contribute to investor protection by encouraging issuers of publicly offered or privately placed securities to select members that are subject to appropriate regulation and oversight for participation in securities offerings. FINRA recognizes that investors are already able to receive projected or targeted returns in communications from parties other than registered broker-dealers, such as unregistered intermediaries⁶² or the securities' issuer.⁶³

⁶² For example, Congress amended the Exchange Act in 2022 to create a registration exemption for certain mergers and acquisition brokers ("M&A Brokers"). M&A Brokers are not subject to any federal or self-regulatory organization rules governing their communications (other than general anti-fraud provisions), including any prohibitions on including projections or targeted returns in their communications. See Consolidated Appropriations Act, Pub. L. No. 117 – 328 (2023) (codified at 15 U.S.C. 78o(b)(13)).

⁶³ The majority of private offerings governed by Securities Act Regulation D (17 CFR 230.501 et seq.) are sold directly by issuers without any broker-dealer involvement. Between 2013 and 2022, among a sample of 279,985 Regulation D offerings, broker-dealers participated in only 5-10% of these offerings each year. See Minwen Li, Tanakorn Makaew & Lori Walsh, FINRA Office of Chief Economist, The Roles of Broker-Dealers in Regulation D Offerings, 2013-2022 (January 24, 2025), <https://www.finra.org/sites/default/files/2025-07/Role-of-Broker-Dealers-in-Regulation-D-Market-FINRA-White-Paper.pdf>. Thus, only a small percentage of investors in private placements are afforded the protections of FINRA rules and other relevant broker-dealer regulations that apply when a Regulation D offering involves a FINRA member firm.

Accordingly, the current prohibition of registered broker-dealers including projected performance or targeted returns in many types of communications creates an incentive for issuers to avoid the registered broker-dealer channel to offer securities and instead use an RIA, an unregistered firm, or market securities directly to potential investors.

The proposed rule change also would allow investors to receive and compare projections provided by members with projections from other entities, with appropriate safeguards. For example, it is very common for issuers to offer their securities directly to investors using performance projections in their marketing communications or offering documents.⁶⁴ It is also very common for RIAs to use projections of performance when marketing private funds that they manage. Approval of the proposed rule change would not level the regulatory playing field entirely between members, RIAs, unregistered firms, and issuers with respect to projected performance, but it would more closely align the regulatory treatment and allow members to present projections and targeted returns to investors subject to existing and proposed investor protections.

⁶⁴ Under FINRA rules, offering materials are considered communications with the public for purposes of Rule 2210 if a member was involved in preparing the materials. If a private placement memorandum (“PPM”) or other marketing document presents information that is not fair and balanced or that is misleading, then the member that assisted in its preparation may be found to have violated Rule 2210. Moreover, sales literature concerning securities offerings that a member distributes generally constitutes a communication by that member to the public, regardless of whether the member assisted in its preparation. See Regulatory Notice 23-08 (May 2023) at page 11; see also Regulatory Notice 10-22 (April 2010) and Regulatory Notice 20-21 (July 2020).

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the implementation date of the rule change in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶⁵ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change strikes the right balance between protecting investors and allowing more investment information to be communicated to an appropriate audience. As discussed above, the proposed rule change would require that the member adopt written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. With this condition, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general retail investor audience because a member could not form any expectations about their financial situation or investment objectives. In addition, in situations where the member has satisfied itself that a retail investor or group of retail investors meets this standard, Reg BI would require members to act in the investor's best interest when making a recommendation of a securities transaction or investment strategy involving securities, regardless of whether a projection is used as a basis for the

⁶⁵ 15 U.S.C. 78o-3(b)(6).

recommendation.

FINRA believes that the proposed rule change would provide additional sources of information for investors in their investment decision making. As mentioned previously, some investors, particularly institutional and other sophisticated investors, develop their own opinions regarding the future performance of an investment based on the multiple sources of information at their disposal. They test these opinions against the views and data provided by other sources, which often summarize their conclusions in terms of a projection of performance of the investment. This is particularly true in the offering of securities by issuers, including hedge funds and other investment vehicles. Rule 2210(d)(1)(F) currently does not permit members to share their views on projection-related data with investors in these situations due to its restrictions on members communicating projected performance information.

Even so, the proposed changes would provide safeguards for communications that contain projections of performance or targeted returns, including requiring members to adopt and implement policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. They would mandate that members have a reasonable basis for the criteria used and assumptions made in calculating the projections of performance or targeted returns.

The proposed changes also would require a member to provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the projected performance or targeted return, and to

understand the risks and limitations of using projected performance or targeted returns in making investment decisions.

The proposed rule change also would reduce investor confusion, as currently investors may receive different information about the same investments, depending on the financial professional. As discussed above, the proposed changes recognize that investors are already able to receive projected performance or targeted returns in communications from parties other than broker-dealers and, to address this discrepancy, the changes more closely align the ability of broker-dealers to offer projections to investors with the ability of issuers and other non-member firms, including RIAs consistent with the IA Marketing Rule, to offer projections. The proposed rule change would allow investors to receive and compare projections provided by members with projections from other entities, with appropriate safeguards designed to protect investors.

FINRA believes that investors would be better protected if issuers offered their securities through broker-dealers, which are subject to a much more rigorous set of rules governing communications than issuers, and that are subject to regulatory oversight from the Commission, FINRA and state securities regulators. The proposed rule change may enable more issuers to use broker-dealers for their securities offerings. In addition, investors who are retail customers under Reg BI will receive the additional protections of that rule.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

A. Regulatory Need

Among other things, commenters during the retrospective review of rules governing communications with the public expressed concerns that the current prohibition on projections of performance imposes undue restrictions on broker-dealer customers.⁶⁶ The amendments in this proposed rule change are intended to better align the treatment of projections of performance and targeted returns in broker-dealer communications under FINRA Rule 2210 with the treatment of hypothetical performance information in investment adviser communications under the IA Marketing Rule. FINRA believes that such further alignment will help investors, including by reducing investor confusion and enabling them to receive additional information when making investment decisions and by increasing regulatory harmonization while maintaining investor protection safeguards.

B. Economic Baseline

The economic baseline used to evaluate the impact of the proposed rule change is the current regulatory framework. This baseline serves as the primary point of

⁶⁶ See letters responding to Regulatory Notice 14-14 (April 2014) from the Financial Services Roundtable (May 22, 2014) and the Securities Industry and Financial Markets Association (May 23, 2104), both available at www.finra.org.

comparison for assessing economic impacts, including the incremental benefits and costs of the proposed rule change.⁶⁷

Currently, absent an applicable exception⁶⁸ from the general prohibition on members projecting performance in their communications, members and their representatives may not present investors with performance projections or targeted returns regarding various investment opportunities. However, some of these members may have customers that already have access to or already receive projections-related communications from other sources, such as a member that is dually registered as an investment adviser and acting in an advisory capacity, a member's investment adviser affiliate, or an unaffiliated third-party investment adviser. For example, some dually registered members and dually registered representatives already communicate information regarding projected performance to their advisory clients.⁶⁹ Similarly, members that are not registered as investment advisers may have registered representatives that are dually registered and work for both the broker-dealer member and

⁶⁷ Thus, the economic baseline used here does not include the rule amendments that were part of SR-FINRA-2023-016.

⁶⁸ See supra notes 4-12 and accompanying text.

⁶⁹ FINRA estimates that, as of December 31, 2024, approximately 410 member firms are dually registered as broker-dealers and investment advisers. FINRA further estimates that these dually registered firms have approximately 416,000 registered representatives, and 247,000 (or about 59 percent) of these individuals are dually registered both as investment adviser and broker-dealer representatives. FINRA estimates that approximately 130 of the dually registered firms have a total of 1800 individuals that are solely registered as investment adviser representatives. FINRA notes that in addition to the dually registered representatives, investment adviser-only representatives may also be providing projections-related communications to their advisory clients. Individuals who are registered with more than one member firm are counted more than once in the above statistics.

a third-party investment adviser.⁷⁰ Members and their registered representatives that are also investment advisers may not be impacted by the proposed rule change, since they are already able to provide this information when acting in an advisory capacity.

FINRA also notes that investors may be solicited to purchase individual securities directly by an issuer without the involvement of a broker-dealer, and issuers often use performance projections and targeted returns in their communications.

C. Economic Impacts

FINRA anticipates that the proposed rule change will potentially impact all investors who currently do not have access to projections-related communications but could under the proposed rule change, and those members that serve these investors. In practice, however, FINRA expects that the proposed rule change will primarily impact institutional and other sophisticated investors and those members that serve them. The proposed rule change require, as discussed earlier in Item 3.(a), that “the member [adopt and implement] written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication.”⁷¹ Thus, FINRA expects that projections-related communications will only be distributed to investors who have the financial

⁷⁰ FINRA estimates that, as of December 31, 2024, approximately 2,800 member firms are only registered as broker-dealers and these firms have approximately 278,000 registered representatives. FINRA further estimates that approximately 83,000 of these individuals are dually registered both as investment adviser and broker-dealer representatives. These dually registered representatives may have customers with access to projections-related communications through their investment advisory relationships with third-party investment advisers. Individuals that are registered with more than one member firm are counted more than once in the above statistics.

⁷¹ See proposed Rule 2210(d)(1)(F)(iv)a.

expertise and resources to evaluate investments and to understand the assumptions and limitations associated with such projections. To the extent that a member makes this determination with respect to recommendations of securities transactions or investment strategies involving securities to particular retail customers, Reg BI would further protect the retail customers, as it requires a broker-dealer to act in a retail customer's best interest when recommending a securities transaction or investment strategy involving securities.

The impact of the proposed rule change likely will be most pronounced for products such as private placements and services such as providing investors with customized investment strategies where there exists little publicly available information, and where the member or its representatives have access to relevant non-public information and expertise. In such instances, projections-related communications provided by the member may be especially valuable to investors given the dearth of other available information. At the same time, such instances may also represent situations with elevated risks to investors, as projections in these instances may be harder to validate. However, the obligation for members to have a reasonable basis for projections and targeted returns would mitigate this risk.

Anticipated Benefits

The proposed rule change would allow members to better inform investors about an individual security, asset allocation, or other investment strategy and the underlying assumptions upon which related recommendations are based. FINRA anticipates that these benefits primarily would accrue to investors who would now be eligible to receive projections of performance and who currently do not have enough information about the specific investment or strategy to make their own projections. The proposed rule change

may also potentially benefit investors who make their own projections and can now compare them to projections furnished by their broker-dealer or can compare the broker-dealer's projections against those from other sources. These sources may include, for example, investment advisers, the securities' issuer, or some other intermediary who also provides projections.

For these benefits to accrue, the performance projections or targeted returns must be objectively informative, and the magnitude of benefit depends on the extent to which customers value these communications and find them informative. In addition, the proposed rule change would reduce the effort needed for dually registered firms to comply with two sets of regulatory standards for communications containing projections or targeted returns and would eliminate confusion for investors that currently receive different information about the same investments from different sources. The same would apply to issuers that sell their products through both investment adviser and broker-dealer channels.

Anticipated Costs

Members that choose to communicate performance projections or targeted returns, as allowed by the proposed rule change, would also incur costs associated with supervising these communications and complying with the proposed rule change's conditions. Such efforts would include adopting and implementing written policies and procedures that are reasonably designed to ensure compliance with the proposed rule change's requirements and monitoring the effectiveness of those policies and procedures. In addition, the proposed rule change may impose costs on both members and investors where an investor misunderstands or misuses a projection that they would not otherwise

receive to make an investment choice that is inconsistent with their investment objectives. If, as a result, investors suffer investment losses, they may seek recourse. This may result in expenses, including legal expenses, for such investors. Since members are not required to provide projections to investors, some members may consider doing so only if they anticipate that the benefits of providing projections exceeds the expected risks and costs.

Competitive Effects

Currently, members that are not also registered as investment advisers are unable to provide projections or targeted returns to their customers except as permitted under Rule 2210(d)(1)(F). At the same time, members that are dually registered or that employ dually registered persons may already provide some customers with performance projections beyond those allowed under Rule 2210 in their capacities as RIAs or investment adviser representatives. The proposed rule change would create comparable investment adviser and broker-dealer standards for communications related to performance projections and targeted returns, thus more closely aligning the regulatory treatment among broker-dealers, investment advisers, and issuers with respect to such communications.

D. Alternatives Considered

In considering how to best meet its regulatory objectives, FINRA considered alternatives to certain aspects of this proposed rule change.

In particular, as described in detail in Item 3.(a), subsections “Previous Proposals” and “Comparison to November 2023 Rule Change,” FINRA previously filed with the Commission the November 2023 rule change, which would have created a narrower

exception to Rule 2210's general prohibition on performance projections. The narrower exception included a threshold limitation on which investors could receive projections or targeted returns from broker-dealers.⁷²

When compared to the November 2023 rule change, FINRA believes that the elimination of such a threshold limitation, among other aspects of the proposed rule change, will be more effective in reducing investor confusion, better serve investors by enabling them to receive additional information when making investment decisions, and increase regulatory harmonization while maintaining investor protection safeguards.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on this proposed rule change. However, as noted above, FINRA has solicited comment on previous rulemaking initiatives relating to members' ability to project performance. Specifically, in February 2017, FINRA published Regulatory Notice 17-06, requesting comment on proposed amendments that would have created an exception to the rule's prohibition on projecting performance to permit members to distribute customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified

⁷² As discussed above, the November 2023 rule change would have permitted projections of performance and targeted returns only in (i) institutional communications and (ii) communications to qualified purchasers as defined under the ICA and knowledgeable employees as defined in ICA Rule 3c-5 in connection with specified exempt private offerings that are excluded from filing under FINRA Rules 5122 and 5123. See supra notes 19-27 and accompanying text.

conditions. As noted above, FINRA received 23 comment letters, 21 commenters of which supported the proposal, and two commenters opposed the proposal.⁷³

In response to the SEC’s adoption of the IA Marketing Rule, SEC staff comments, and industry comments, including comments to Regulatory Notice 17-06 that focused on the ability to provide projections on single securities for institutional and other sophisticated investors, FINRA revised its approach. As discussed above, FINRA filed with the Commission the November 2023 rule change, which would have allowed a member to include projections of performance and targeted returns in specified communications to institutional investors. The SEC received 10 comments in response to the initial rule filing, and four additional comments after instituting proceedings.⁷⁴ A full discussion of those comments, and FINRA’s responses, are available in letters FINRA submitted to the Commission in that rulemaking. In general, FINRA believes that the

⁷³ See supra note 18 and accompanying text. Because the current proposed rule change represents a significant shift from the approach set forth in Regulatory Notice 17-06, both in terms of the scope of the proposed exception from the general prohibition, as well as the proposed conditions, a comprehensive discussion of the comments to Regulatory Notice 17-06 is not relevant here. For a full discussion addressing the comments to Regulatory Notice 17-06, see Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

⁷⁴ See Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016) and Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (“Initial Response to Comments”) (including, as Attachment A, an Alphabetical List of Commenters to File No. SR-FINRA-2023-016); see also Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated July 17, 2024 (discussing and rebutting comments the Commission received in response to its notice and order in the Federal Register soliciting comments on the Partial Amendment SR-FINRA-2023-016 and instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act).

current proposed rule change addresses comments that supported the overall intent of the November 2023 rule change and the ability for members to use projections and targeted returns in some circumstances, but that advocated for further regulatory harmonization. As discussed above, as compared to the November 2023 rule change, the proposed rule change more closely aligns the treatment of projections of performance and targeted returns for broker-dealers with similar requirements for investment advisers under the IA Marketing Rule, while also maintaining investor protection safeguards. Accordingly, the proposed rule change would lessen the regulatory inconsistencies regarding the use of performance projections between broker-dealers and stand-alone investment advisers and would minimize the current opportunities for regulatory arbitrage.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁷⁵

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

⁷⁵ 15 U.S.C. 78s(b)(2).

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2026-004)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2210 (Communications with the Public). Currently, Rule 2210 prohibits projections of performance or targeted returns in member communications, subject to specified exceptions. The proposed rule change would allow a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions to ensure these projections are carefully derived from a sound basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org> and at the principal office of FINRA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 2210's General Prohibition of Projections and Its Exceptions

Rule 2210 provides that communications³ may not predict or project performance, imply that past performance will recur or make any exaggerated or

³ “Communications” consist of correspondence, retail communications, and institutional communications. See Rule 2210(a)(1). Correspondence means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period. Rule 2210(a)(2). Retail communication means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(a)(5). Institutional communication means any written (including electronic) communication that is distributed or made available only to institutional investors but does not include a member’s internal communications. Rule 2210(a)(3). Rule 2210(a) defines each of these three communication types as communications that are “distributed or made available” to investors, with the definitions varying based on the specific audience and number of investors to whom the communication is distributed or made available.

unwarranted claim, opinion or forecast.⁴ The general prohibition against performance projections is intended to protect investors who may lack the capacity to understand the risks and limitations of using projected performance in making investment decisions.

This general prohibition has some exceptions, however. First, Rule 2210 allows a hypothetical illustration of mathematical principles, provided it does not predict or project the performance of an investment or investment strategy.⁵ The “hypothetical illustration of mathematical principles” exception to the prohibition of projections applies to tools that serve the function of a calculator that computes the mathematical outcome of certain assumed variables without predicting the likelihood of either the assumed variables or the outcome. For example, this exception applies to a calculator that computes a net amount of savings that an investor would earn over an assumed period of time with assumed variables of rates of returns, frequency of compounding, and tax rates.⁶

Second, the general prohibition on projections does not preclude a member from employing an investment analysis tool, or a written report produced by an investment analysis tool, that includes projections of performance provided it meets the requirements of Rule 2214 (Requirements for the Use of Investment Analysis Tools).⁷

FINRA adopted the predecessor to Rule 2214 in 2004 to allow members to offer or

⁴ See Rule 2210(d)(1)(F).

⁵ See Rule 2210(d)(1)(F)(i).

⁶ On the other hand, this exception would not apply to a calculator that predicted the likelihood of achieving these assumed variables and outcomes. See Notice to Members 04-86 (November 2004), n.3.

⁷ See Rule 2210(d)(1)(F)(ii).

employ technological tools that use a mathematical formula to calculate the probability that investment outcomes (such as reaching a financial goal) would occur.⁸

An “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.⁹ Investors may use an investment analysis tool either independently or with assistance from a member, and investors may receive written reports generated by the tool that include projected performance that is consistent with Rule 2214’s requirements.¹⁰

Third, members may include a price target in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by a disclosure concerning risks that may impede achievement of the price target.¹¹

In addition, a communication with the public regarding security futures or options may contain projected performance figures (including projected annualized rates of return), provided that the communication meets specified requirements.¹² Among

⁸ See Notice to Members 04-86, supra note 6.

⁹ See Rule 2214(b).

¹⁰ For a more detailed discussion of the differences between Rule 2214 and the proposal, see Comparison to Projections Permitted by Rule 2214, infra.

¹¹ See Rule 2210(d)(1)(F)(iii).

¹² See Rules 2215 (Communications with the Public Regarding Security Futures) and 2220 (Options Communications).

other things, the communication must be accompanied or preceded by a standardized risk disclosure statement, the communication may not suggest certainty of the projected performance, parameters relating to such performance figures must be clearly established, and the projections must disclose and reflect all relevant costs, commissions, fees, and interest charges (as applicable).¹³

Need for an Additional Exception

Based on feedback received during a retrospective rule review from members and FINRA's advisory committees, comments on a prior proposed rule change that would have allowed projections of performance and targeted returns,¹⁴ and FINRA's experience with the rules, FINRA determined that an additional exception to the general prohibitions on projections in member communications is warranted. FINRA understands that some broker-dealer customers, including institutional and other sophisticated investors, request other types of projected performance that the current rules do not allow.¹⁵ These customers, in particular, may request information that includes projections of performance or targeted returns concerning investment opportunities to help them make informed investment decisions but are unable to receive this information from members due to the prohibition on projections. For example, a member's views regarding the projected performance of an investment strategy or single security may be particularly

¹³ See Rules 2215(b)(3) and 2220(d)(3).

¹⁴ See discussion of previous proposals, infra; see also infra note 29 (comparison of projections to targeted returns).

¹⁵ See Regulatory Notice 14-14 (April 2014); see also Retrospective Rule Review Report: Communications with the Public (December 9, 2014), <https://www.finra.org/rules-guidance/guidance/reports/communications-public>.

useful to investors who are eligible to invest in certain non-public offerings that are relying on exceptions from registration under the Securities Act of 1933 (“Securities Act”) and, with respect to private funds, exclusions from the definition of “investment company” under the Investment Company Act of 1940 (“ICA”).

In addition, projected performance may be useful when investors either have the financial expertise to evaluate investments and to understand the assumptions and limitations associated with such projections or have resources that provide them with access to financial professionals who possess this expertise. Such investors often test their own opinions against performance projections they receive from other sources, including issuers and investment advisers. Because Rule 2210 generally precludes a member from providing projected performance or targeted returns in communications, these investors cannot obtain a member’s potentially different and valuable perspective. Moreover, because registered investment advisers (“RIAs”) are permitted to provide investors with this type of performance information, subject to the conditions in the SEC’s rule governing investment adviser marketing¹⁶ (“IA Marketing Rule”) under the Investment Advisers Act of 1940 (“Advisers Act”),¹⁷ Rule 2210’s prohibition on projections can lead to investor confusion, as it results in investors receiving different information about the same investments depending on the financial professional with whom they engage.

¹⁶ See Investment Advisers Act Release No. 5653 (December 22, 2020), 86 FR 13024 (March 5, 2021) (adoption of Investment Advisers Act of 1940 Rule 206(4)-1 (Investment Adviser Marketing)) (“IA Marketing Rule Release”).

¹⁷ See 15 U.S.C. 80b-1 et seq.

Previous Proposals

FINRA has previously pursued rulemaking to address the regulatory need for an exception to the general prohibition on members projecting performance in their communications. In February 2017, FINRA published Regulatory Notice 17-06 (the “Notice”), requesting comment on proposed amendments that would have created an exception to the rule’s prohibition on projecting performance to permit members to distribute customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified conditions.¹⁸ Among other things, commenters responding to the Notice urged FINRA to revise the proposal to permit projections of performance of single securities, particularly for communications to sophisticated investors, including qualified purchasers.¹⁹

In response to comments to that Notice, FINRA’s experience with the rule, and in light of the Commission’s adoption of the IA Marketing Rule, FINRA shifted its approach and filed a proposed rule change with the Commission on November 13, 2023 (the “November 2023 rule change”).²⁰ The November 2023 rule change, as amended,²¹

¹⁸ See Regulatory Notice 17-06 (February 2017).

¹⁹ FINRA received 23 comments in response to Regulatory Notice 17-06. Twenty-one commenters supported the proposal, and two commenters opposed the proposal. For a full discussion addressing the comments to Regulatory Notice 17-06, see Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

²⁰ See Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

²¹ See Securities Exchange Act Release No. 99588 (February 22, 2024), 89 FR 14728 (February 28, 2024) (Notice of Filing Amendment No. 1 and Order

would have created an exception from Rule 2210's general prohibition on performance projections to allow a member, when conditions were met, to project the performance or provide a targeted return with respect to a security or asset allocation or other investment strategy in communications to specified sophisticated investors. A member would have been permitted to provide performance projections or targeted returns only in: (1) an institutional communication; or (2) a communication that is distributed or made available only to: (a) persons meeting the definition of "qualified purchaser" under the ICA and that promotes or recommends a Member Private Offering that is exempt from the requirements of Rule 5122 pursuant to Rule 5122(c)(1)(B); or (b) persons meeting the definition of "qualified purchaser" under the ICA or "knowledgeable employee" under ICA Rule 3c-5 and that promotes or recommends a private placement that is exempt from the requirements of Rule 5123 pursuant to Rules 5123(b)(1)(B) or 5123(b)(1)(H).

In addition to this general limitation on the types of investors who would have been eligible to receive communications with projections or targeted returns, the November 2023 rule change also would have imposed specified conditions on members that choose to provide such communications. The exception to the general prohibition on the use of projections would have been conditioned on: (1) the member adopting and implementing written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations; (2) the member having a reasonable basis for the criteria

used and assumptions made in calculating the projected performance or targeted return, and retaining written records supporting the basis for these criteria and assumptions; (3) the communication prominently disclosing that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projected or targeted performance will be achieved; and (4) the member providing sufficient information to enable the investor to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.

During the rulemaking process, many commenters urged FINRA to align the rule more closely with the IA Marketing Rule, including by eliminating the threshold limitation on investors who could receive projections from broker-dealers and allowing projections and targeted returns for a wider range of investors.²² FINRA responded to comments to the November 2023 rule change and, at that time, determined not to significantly broaden the scope of the investors who could receive projections under that rule change.²³

On February 22, 2024, the Commission instituted proceedings under Section

²² For a full discussion of the comments received to the November 2023 rule change and FINRA's response, see Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (summarizing and responding to comments to File No. SR-FINRA-2023-016).

²³ See supra note 22.

19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the November 2023 rule change.²⁴ On July 19, 2024, the Division of Trading and Markets, for the Commission pursuant to delegated authority,²⁵ approved the November 2023 rule change, as modified by Partial Amendment No. 1.²⁶ On July 26, 2024, the Deputy Secretary of the Commission notified FINRA that, pursuant to Rule 431 of the Commission's Rules of Practice,²⁷ the Commission would review the Delegated Order and that the Delegated Order was stayed until the Commission ordered otherwise.²⁸

FINRA has had the opportunity to further consider the need for an exception to the general prohibition on projections of performance in member communications, as well as the comments in response to the November 2023 rule change. FINRA has determined that further alignment with the IA Marketing Rule's provisions governing hypothetical performance will help investors, including by reducing investor confusion and enabling them to receive additional information when making investment decisions, and increase regulatory harmonization while maintaining investor protection safeguards. If the Commission approves the proposed rule change, FINRA intends to withdraw the

²⁴ See supra note 21.

²⁵ 17 CFR 200.30-3(a)(12).

²⁶ See Securities Exchange Act Release No. 100561 (July 19, 2024), 89 FR 60461 (July 25, 2024) (Order Approving File No. SR-FINRA-2023-016) ("Delegated Order").

²⁷ 17 CFR 201.431.

²⁸ See Letter from J. Matthew DeLesDernier, Deputy Secretary, SEC, to Meredith Cordisco, Associate General Counsel, FINRA, dated July 26, 2024, <https://www.sec.gov/files/rules/sro/finra/2024/letter-regarding-sr-finra-2023-016.pdf>.

stayed November 2023 rule change.

Proposed Amendments

The proposed rule change would create a new, narrowly tailored, exception to the general prohibition of projections for a communication that projects performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy when members meet specified conditions. The exception would be conditioned on: (1) the member adopting and implementing written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication; (2) the member having a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retaining written records supporting the basis for such criteria and assumptions;²⁹ and (3) the member providing sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including

²⁹ FINRA recognizes that there may be some differences between targeted returns and projections of performance, depending on the circumstances. Targeted returns are aspirational and may be used as a benchmark or to describe an investment strategy or objective to measure the success of a strategy. Projections of performance, on the other hand, use historical data and assumptions to predict a potential return. Thus, targeted returns may not involve all (or any) of the assumptions and criteria applied to generate a projection. Because the intended audience of a communication may not always understand or appreciate the differences between targeted returns and projections of performance, both would be subject to the same conditions, including that they must have a reasonable basis.

reasons why the projected performance or targeted return might differ from actual performance.³⁰

Written Policies and Procedures

The proposed rule change would require a member to adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication.³¹ The proposed rule change does not prescribe the ways in which a member may satisfy the policies and procedures requirement, including how the member will establish that the policies and procedures are reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. Instead, this condition is intended to provide members with the flexibility to develop policies and procedures that best suit their investor base and the business in which they engage. A member could meet the proposed rule change's requirement to adopt and implement policies and procedures reasonably designed to ensure that the projected performance or targeted returns are relevant to the likely financial situation and intended audience by, for example, adopting and implementing written policies and procedures that are based in part on the member's past experiences with particular types of investors who seek this information. A member may wish to further tailor its intended audience for such a communication to persons or entities that have expressed interest in particular types of securities, or who have invested in similar securities in the past.

³⁰ See proposed Rule 2210(d)(1)(F)(iv).

³¹ See proposed Rule 2210(d)(1)(F)(iv)a.

Reasonably designed policies and procedures need not address each recipient's particular circumstances; rather, a member's policies and procedures may account for the grouping of investors into categories or types based on the member's reasonable judgment as to the likely investment objectives and financial situation of that investor category that is the intended audience of a communication.

A communication that contains projections of performance or targeted returns should only be distributed, however, where the member reasonably believes the investors for whom that communication is intended have the financial expertise and resources to understand the risks and limitations of such presentations.³² Under the proposed rule change, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general retail investor audience. In the case of communications available to mass audiences, a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience.

To the extent that a member makes this determination with respect to particular retail investors to whom it is recommending a securities transaction or investment strategy involving securities, the Exchange Act's Regulation Best Interest ("Reg BI")³³ would further protect retail investors, as it requires a broker-dealer to act in a retail

³² FINRA would not view the mere fact that an investor would be interested in high returns as satisfying the requirement that the projected performance or targeted return is relevant to the likely financial situation and investment objectives of the intended audience.

³³ 17 CFR 240.151-1.

customer's best interest when making such recommendations³⁴ and to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.³⁵

This condition in the proposed rule change is substantially similar to a condition governing RIAs' use of hypothetical performance in the IA Marketing rule.³⁶ Specifically, the IA Marketing Rule conditions RIAs' use of hypothetical performance in investment adviser advertisements on, among other conditions, the investment adviser adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement. FINRA anticipates that it would interpret requirements in the proposed rule change that align with similar requirements in the IA Marketing Rule's condition consistently with how the Commission has interpreted those IA Marketing Rule requirements.³⁷

³⁴ See 17 CFR 240.15l-1(a)(1).

³⁵ See 17 CFR 240.15l-1(a)(2)(iv). Reg BI defines "retail customer" to mean a natural person, or the legal representative of such natural person, who (i) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or natural person who is an associated person of a broker or dealer, and (ii) uses the recommendation primarily for personal, family, or household purposes. See 17 CFR 240.15l-1(b)(1).

³⁶ See 17 CFR 275.206(4)-1(d)(6)(i).

³⁷ Neither FINRA's November 2023 rule change nor the current proposed rule change interprets the Commission's IA Marketing Rule, and nothing in this proposed rule change should be construed as impacting the application or interpretation of the SEC's rule.

Reasonable Basis Requirement

In order to include projections of performance and targeted returns in a communication, a member must have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return and retain written records supporting the basis for such criteria and assumptions.³⁸ The reasonable basis requirement is foundational and follows well-established precedents. For example, Rules 2210 and 2241 (Research Analysts and Research Reports) require a price target in a research report to have a reasonable basis.³⁹ SEC rules also require performance projections contained in specified documents to be based on good faith and have a reasonable basis.⁴⁰

FINRA notes that the proposed rule change does not prescribe the manner in which the member forms its reasonable basis, nor does it require members, or third parties whose projections or targeted returns appear in member communications, to adopt a prescribed methodology in creating these projections. Like in other contexts where a broker-dealer must form a reasonable basis, the factors a member considers when forming its reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns would depend on the facts and circumstances.⁴¹

³⁸ See proposed Rule 2210(d)(1)(F)(iv)b.

³⁹ See Rule 2210(d)(1)(F)(iii) and Rule 2241(c)(1)(B).

⁴⁰ See Securities Act Regulation S-K, 17 CFR 229.10(b) (providing in part that the use in documents specified in Securities Act Rule 175 and Exchange Act Rule 3b-6 of management's projections of future economic performance have a reasonable basis and reflect its good faith assessment of a registrant's future performance).

⁴¹ See, e.g., Regulation Best Interest, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33378 (July 12, 2019) (discussing that the relevance of factors to consider when forming a reasonable basis under the Reg BI Care

Nevertheless, FINRA believes that it is important for members to consider appropriate factors in forming a reasonable basis for the criteria used and assumptions made in calculating projected performance or a targeted return pursuant to proposed Rule 2210(d)(1)(F)(iv). These factors may include, for example, such considerations as: global, regional, and country macroeconomic conditions; in the case of a single security issued by an operating company, the issuing company's operating and financial history; the industry's and sector's current conditions and the stage of the business cycle; the quality of the assets included in a securitization; and the appropriateness of selected peer-group comparisons.⁴² While these examples may be relevant, this list is not meant to be prescriptive or exhaustive. Additional or different factors could be pertinent depending on the particular security and the anticipated use of projected performance or targeted returns.

In addition, FINRA expects members to establish and maintain a supervisory system to achieve compliance with the reasonable basis standard.⁴³ Before presenting projected performance or a targeted return, a member should determine whether its existing written supervisory procedures are reasonably designed to ensure that the criteria

Obligation will depend on the facts and circumstances); IA Marketing Rule Release, 86 FR 13024, 13053 (noting that what would constitute a reasonable basis for an investment adviser's belief that a testimonial or endorsement in investment adviser advertisements complies with the requirements of the IA Marketing Rule would depend upon the facts and circumstances).

⁴² See, e.g., CFA Institute, Standards of Practice Handbook (12th ed. 2024), at page 129-30 (requiring, among other things, that CFA Institute Members and Candidates “[h]ave a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.”).

⁴³ See FINRA Rule 3110(a).

used and assumptions made in calculating the projected performance or targeted return have a reasonable basis.

Disclosure Requirements

The requirement to provide sufficient information in the communication to enable the intended audience to understand the criteria used and assumptions made in calculating the projected performance or targeted return is not intended to prescribe any particular methodology or calculation of such performance.⁴⁴ Nor does FINRA expect a firm to disclose proprietary or confidential information regarding the firm's methodology and criteria. Members would be expected, however, to provide a general description of the methodology used sufficient to enable the investors to understand the basis of the methodology, as well as the assumptions underlying the projection or targeted return. Without this basic information, particularly regarding assumptions about future events, it is more likely that a projection or targeted return would mislead a potential investor.

The proposed rule change also would require a member to provide sufficient information in the communication to enable an investor to understand the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.⁴⁵ This requirement is intended to help ensure that such investors do not unreasonably rely on a projection or targeted return given its uncertainty and risks.

⁴⁴ See proposed Rule 2210(d)(1)(F)(iv)c.(i).

⁴⁵ See proposed Rule 2210(d)(1)(F)(iv)c.(ii).

General Standards and Supervision under Rule 2210

As with all communications with the public, member communications that contain projected performance or targeted returns must meet Rule 2210's general standards, including the requirements that communications be fair and balanced, provide a sound basis for evaluating the facts in regard to any particular security or type of security, and not contain false, exaggerated, unwarranted, promissory or misleading content.⁴⁶ Accordingly, in addition to the reasonable basis standard, any communication containing a projection or targeted return would be prohibited from presenting exaggerated or unwarranted projections or targeted returns.

Members currently must adopt appropriate procedures for the supervision and review of both institutional and retail communications.⁴⁷ If the proposed rule change is adopted, these supervisory procedures would need to include the review of projections of performance or targeted returns used in communications, including compliance with the proposed rule change's specific conditions. In addition, members generally would be required to approve, prior to use or filing, any communication that falls within Rule 2210's definition of "retail communication."⁴⁸

Members that use third-party vendors to perform core business or regulatory oversight functions must establish and maintain a supervisory system, including written supervisory procedures, for any activities or functions performed by third-party vendors that are reasonably designed to ensure compliance with applicable securities laws and

⁴⁶ See Rule 2210(d)(1)(A) and (B).

⁴⁷ See Rule 2210(b)(1) and (b)(3).

⁴⁸ See Rule 2210(b)(1).

regulations and with applicable FINRA rules.⁴⁹ Accordingly, if a member relies on third-party models or software to create a projection or targeted return, the member would be expected to establish and maintain a supervisory system reasonably designed to ensure that any projections or targeted returns created by a third-party vendor are used consistently with the proposed rule change's requirements.

For example, the member would need to obtain enough information to form a reasonable basis as to the third-party's assumptions and the underlying criteria and would need to retain written records supporting the basis for such criteria and assumptions. Members should make reasonable efforts to determine whether the model or software is sound and should make reasonable inquiries into the source and accuracy of the data used to create the projection or targeted return. If the member has reason to suspect that the third-party model or software lacks a sound basis, the member should investigate the matter and, if it cannot be reasonably assured that the model or software is sound, must not use it. Among factors that a member may wish to employ to evaluate the third-party model or software are the assumptions used to create the projection or target, the rigor of its analysis, the date and timeliness of any research used to create the model or software, and the objectivity and independence of the entity that created the model or software.

As discussed above, members also must keep in mind that if they use a projection of performance or targeted return in connection with a recommendation of a securities transaction or investment strategy involving securities to a retail customer, the recommendation must meet the requirements of Reg BI.

⁴⁹ See Regulatory Notice 21-29 (August 2021).

Comparison to Projections Permitted by FINRA Rule 2214

There are several key differences between the types of projections that Rule 2214 permits as compared to those that the proposed rule change would allow. First, Rule 2214 differs from the proposed rule change in terms of how a projection may be communicated. Rule 2214 allows a projection of performance that is created by an investment analysis tool that any retail customer uses on a one-on-one interactive basis, either independently or with a member's assistance, and that provides individualized results to each user. In contrast, unlike Rule 2214, the proposed rule change does not mandate an interactive element associated with the delivery of projections. Instead, firms could provide projections or targeted returns to investors using any form of communication that otherwise complies with the proposed rule change, applicable requirements of FINRA rules, and the federal securities laws.

Second, Rule 2214 requires the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies are undertaken. Although the rule does not expressly require the use of a particular type of statistical analysis, in many cases firms (or their vendors) use Monte Carlo simulations for this process.⁵⁰ In contrast,

⁵⁰ Monte Carlo simulation involves the use of a computer to represent the operations of a complex financial system. A characteristic feature of Monte Carlo simulation is the generation of a large number of random samples from specified probability distributions to represent the operation of the system. Monte Carlo simulation is used in planning in financial risk management and in valuing complex securities. Monte Carlo simulation is a complement to analytical methods but provides only statistical estimates, not exact results. See CFA Institute, Common Probability Distributions (CFA Program Level I, 2023 Curriculum), available at <https://www.cfainstitute.org/membership/professional-development/refresher-readings/common-probability-distributions>.

the proposed rule change would not require communications to investors that include performance projections or targeted returns to consider potential returns under various scenarios and the probability of success for each scenario.

Third, Rule 2214's disclosure requirements differ somewhat from those under the proposed rule change. Rule 2214 requires an investment analysis tool, a written report generated by the tool, or a related retail communication to:

- Describe the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;
- explain that results may vary with each use and over time;
- if applicable, describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, disclose if the tool favors certain securities and, if so, explain the reason for the selectivity, and state that other investments not considered may have characteristics similar or superior to those being analyzed; and
- display a prescribed disclosure concerning the hypothetical nature of the projections, that they do not reflect actual investment results, and that they are not guarantees of future results.⁵¹

In contrast, the proposed rule change would require a member to provide "sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees

⁵¹ See Rule 2214(c).

and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.”⁵²

While the proposed rule change’s methodology disclosure requirement resembles the methodology disclosure requirements in Rule 2214, they are worded differently to reflect different types of communications to which the proposed rule change and Rule 2214 apply. For example, an investment analysis tool permitted by Rule 2214 may recommend that an investor consider an alternative account portfolio to improve the range of its potential returns but limit the securities that may populate the portfolio. This limitation is important information to investors when considering whether to change their investments. In contrast, the proposed rule change may be more likely to apply to a projection or targeted return that is included in a communication promoting a single security or investment strategy and thus would impose different disclosure requirements relative to those scenarios.

Comparison to IA Marketing Rule’s Hypothetical Performance Standards

As discussed above, the proposed rule change is generally consistent with the IA Marketing Rule, which permits investment advisers to present hypothetical performance in an advertisement if the investment adviser meets specified conditions and does not violate the IA Marketing Rule’s other requirements.⁵³

The requirements of the IA Marketing Rule in many ways overlap with the proposed rule change’s requirements, and FINRA anticipates that it would interpret

⁵² See proposed Rule 2210(d)(1)(F)(iv)c.

⁵³ See 17 CFR 275.206(4)-1(d)(6).

requirements in the proposed rule change that align with similar requirements in the IA Marketing Rule consistently with how the Commission has interpreted those IA Marketing Rule requirements. Thus, member firms should be able to comply with these proposed requirements in a manner similar to how investment advisers must comply with similar requirements applicable to the use of hypothetical performance under the IA Marketing Rule.⁵⁴

In addition, similar to Rule 2210, the IA Marketing Rule generally requires advertisements to be fair and balanced and prohibits any advertisement that includes any untrue statement of a material fact or omits to state a material fact necessary to make the statement made under the circumstances not misleading.⁵⁵

While FINRA has endeavored to align, where appropriate, the conditions the SEC applies to hypothetical performance under its IA Marketing Rule, there are some differences. First, the scope of the type of performance covered in the proposed rule change is narrower than the relevant IA Marketing Rule provisions. In this regard, the relevant provision of the IA Marketing Rule addresses “hypothetical performance,” which includes performance derived from model portfolios; performance that is back-tested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to the securities offered.⁵⁶ The proposed rule change is intentionally narrower in that it

⁵⁴ See IA Marketing Rule Release, 86 FR 13024, 13083-85.

⁵⁵ See 17 CFR 275.206(4)-1(a).

⁵⁶ See 17 CFR 275.206(4)-1(e)(8).

includes only projections of performance and targeted returns. Targeted returns reflect the aspirational performance goals for an investment or investment strategy. Projections of performance reflect an estimate of the future performance of an investment or investment strategy, which is often based on historical data and assumptions. Projections of performance are commonly established through mathematical modeling.⁵⁷

Second, as noted above, the proposed rule change expressly requires a member to have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return and requires that the member retains written records supporting the basis for such criteria and assumptions. FINRA views this requirement as foundational; without forming a reasonable basis, a member's projections of performance and targeted returns could be based on guesswork, invalid presumptions, and misleading reasoning. Requiring a reasonable basis ensures that the member acts with reasonable diligence and good faith. While the SEC's IA Marketing Rule does not contain an express reasonable basis requirement in its provision governing hypothetical performance, the rule requires all RIA advertising to be fair and balanced and to meet other hypothetical performance standards.⁵⁸

Third, the proposed rule requires a member to disclose, as part of a projection's or targeted return's risks and limitations, the reasons why the projected performance or targeted return might differ from actual performance. By contrast, the IA Marketing Rule requires an RIA to provide sufficient information to enable the intended audience to

⁵⁷ See IA Marketing Rule Release, 86 FR 13024, 13081 n.699 and accompanying text.

⁵⁸ See 17 CFR 275.206(4)-1(a)(1) through (a)(7).

understand the criteria used and assumptions made in calculating the hypothetical performance and the risks and limitations of using such hypothetical performance in making investment decisions. FINRA believes it is important for investors to understand that projections and targeted returns may not accurately reflect how a product actually performs, including the reasons why this outcome may occur.

Comparison to November 2023 Rule Change

The current proposed rule change differs from the November 2023 rule change in several material ways. First, the current proposed rule change would better align with the IA Marketing Rule by eliminating the November 2023 rule change's threshold restriction on the categories of investors who would be eligible to receive projections and targeted return information in member communications. As noted above, the November 2023 rule change would have allowed members to use projections and targeted returns only in communications to specified sophisticated investors. The IA Marketing Rule has no such threshold limitation on the audience for these communications.⁵⁹ Instead, the IA Marketing Rule conditions the use of hypothetical performance on, among other conditions, the adviser adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience. The proposed rule change,

⁵⁹ The IA Marketing Rule imposes conditions based on the “intended audience” of an investment adviser advertisement. In this regard, the IA Marketing Rule Release states that “[w]e intend for advertisements including hypothetical performance information to only be distributed to investors who have access to resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations.” See IA Marketing Rule Release, 86 FR 13024, 13078.

like the IA Marketing Rule, will have substantially similar conditions, which will ensure that projections of performance and targeted returns are only made available to investors who have the financial expertise and resources to understand the risks and limitations of these types of presentations.

Second, the November 2023 rule change required a communication to prominently disclose that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projection of performance or targeted return will be achieved. Upon further reflection, FINRA believes that this disclosure requirement is unnecessary and potentially duplicative to the proposed rule change's requirement to provide sufficient information to enable the intended audience to understand the limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance. Accordingly, the proposed rule change, like the IA Marketing Rule's provisions, would not require this affirmative disclosure.

Third, the November 2023 rule change proposed, as Supplementary Material to the proposed rule text, factors that a member should consider when forming its reasonable basis.⁶⁰ While FINRA intended that information to be guidance, several commenters raised questions about these factors or their utility. In response, FINRA emphasized that members have flexibility when forming their reasonable basis for projections and targeted returns. The factors listed in the previously proposed Supplementary Material were intended to be helpful guidance, not prescriptive

⁶⁰ See Delegated Order, 89 FR 60461, 60464-65.

requirements or a check-the-box exercise.⁶¹ To avoid confusion, however, FINRA has removed the Supplementary Material, including its factors, from the current proposed rule text. Nevertheless, members would be free to consider those, as well as other factors, when making their reasonable basis determinations.

Fourth, the November 2023 rule proposal specifically prohibited members from basing projected performance or a targeted return upon hypothetical, back-tested performance or the prior performance of a portfolio or model that was created solely for the purpose of establishing a track record. The current proposed rule change does not contain these express prohibitions. While the proposed rule change would no longer expressly prohibit members from using back-tested performance as a factor in determining projected performance or a targeted return, members should keep in mind that the criteria used and assumptions made in calculating projected performance and targeted returns must have a reasonable basis, the communication must include appropriate disclosures, and the presentation of such performance must be fair and balanced.⁶²

⁶¹ See Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (discussing comments regarding proposed Supplementary Material to November 2023 rule change, File No. SR-FINRA-2023-016).

⁶² At least one study has shown that back-tested index performance data is not a reliable indicator of how an exchange-traded fund linked to the index will perform after it is launched. See Institutional Investor, Study Finds Many ETF Indexes Misleading, (August 29, 2012), <https://www.institutionalinvestor.com/article/2bsvknn823v5h6qgbq9z4/portfolio/study-finds-many-etf-indexes-misleading>. For further analysis concerning the reliability of using back-tested performance to predict future performance, see David H. Bailey, Jonathan M. Borwein, Marcos Lopez de Prado & Qiji Jim Zhu, Pseudo-Mathematics and Financial Charlatanism: The Effects of Backtest

Contributions to Investor Protection

FINRA believes that approval of the proposed rule change would contribute to investor protection by enabling investors to access projections when considering specific investments or strategies, when the rule's safeguarding conditions are met. For example, under the current rule, investors are not permitted to receive projections from broker-dealers, despite the fact that such projections may assist them in evaluating potential securities purchases or sales, choosing appropriate investment strategies, or creating strategic plans for their business operations. Under the proposed rule change, investors would have access to projected performance or targeted returns that must comply with Rule 2210's existing prohibition of false or misleading statements or claims and the proposed rule change's disclosure requirements. In addition, the proposed rule change would reduce confusion for investors who currently may receive differing information depending on the regulated nature of their intermediary (such as RIAs) or are prohibited from receiving information that could be useful to their investment decision-making process.

FINRA believes the proposed rule change also would contribute to investor protection by encouraging issuers of publicly offered or privately placed securities to select members that are subject to appropriate regulation and oversight for participation in securities offerings. FINRA recognizes that investors are already able to receive

projected or targeted returns in communications from parties other than registered broker-dealers, such as unregistered intermediaries⁶³ or the securities' issuer.⁶⁴

Accordingly, the current prohibition of registered broker-dealers including projected performance or targeted returns in many types of communications creates an incentive for issuers to avoid the registered broker-dealer channel to offer securities and instead use an RIA, an unregistered firm, or market securities directly to potential investors.

The proposed rule change also would allow investors to receive and compare projections provided by members with projections from other entities, with appropriate safeguards. For example, it is very common for issuers to offer their securities directly to investors using performance projections in their marketing communications or offering documents.⁶⁵ It is also very common for RIAs to use projections of performance when

⁶³ For example, Congress amended the Exchange Act in 2022 to create a registration exemption for certain mergers and acquisition brokers (“M&A Brokers”). M&A Brokers are not subject to any federal or self-regulatory organization rules governing their communications (other than general anti-fraud provisions), including any prohibitions on including projections or targeted returns in their communications. See Consolidated Appropriations Act, Pub. L. No. 117 – 328 (2023) (codified at 15 U.S.C. 78o(b)(13)).

⁶⁴ The majority of private offerings governed by Securities Act Regulation D (17 CFR 230.501 et seq.) are sold directly by issuers without any broker-dealer involvement. Between 2013 and 2022, among a sample of 279,985 Regulation D offerings, broker-dealers participated in only 5-10% of these offerings each year. See Minwen Li, Tanakorn Makaew & Lori Walsh, FINRA Office of Chief Economist, The Roles of Broker-Dealers in Regulation D Offerings, 2013-2022 (January 24, 2025), <https://www.finra.org/sites/default/files/2025-07/Role-of-Broker-Dealers-in-Regulation-D-Market-FINRA-White-Paper.pdf>. Thus, only a small percentage of investors in private placements are afforded the protections of FINRA rules and other relevant broker-dealer regulations that apply when a Regulation D offering involves a FINRA member firm.

⁶⁵ Under FINRA rules, offering materials are considered communications with the public for purposes of Rule 2210 if a member was involved in preparing the

marketing private funds that they manage. Approval of the proposed rule change would not level the regulatory playing field entirely between members, RIAs, unregistered firms, and issuers with respect to projected performance, but it would more closely align the regulatory treatment and allow members to present projections and targeted returns to investors subject to existing and proposed investor protections.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶⁶ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change strikes the right balance between protecting investors and allowing more investment information to be communicated to an appropriate audience. As discussed above, the proposed rule change would require that the member adopt written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of

materials. If a private placement memorandum (“PPM”) or other marketing document presents information that is not fair and balanced or that is misleading, then the member that assisted in its preparation may be found to have violated Rule 2210. Moreover, sales literature concerning securities offerings that a member distributes generally constitutes a communication by that member to the public, regardless of whether the member assisted in its preparation. See Regulatory Notice 23-08 (May 2023) at page 11; see also Regulatory Notice 10-22 (April 2010) and Regulatory Notice 20-21 (July 2020).

⁶⁶ 15 U.S.C. 78o-3(b)(6).

the intended audience of the communication. With this condition, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general retail investor audience because a member could not form any expectations about their financial situation or investment objectives. In addition, in situations where the member has satisfied itself that a retail investor or group of retail investors meets this standard, Reg BI would require members to act in the investor's best interest when making a recommendation of a securities transaction or investment strategy involving securities, regardless of whether a projection is used as a basis for the recommendation.

FINRA believes that the proposed rule change would provide additional sources of information for investors in their investment decision making. As mentioned previously, some investors, particularly institutional and other sophisticated investors, develop their own opinions regarding the future performance of an investment based on the multiple sources of information at their disposal. They test these opinions against the views and data provided by other sources, which often summarize their conclusions in terms of a projection of performance of the investment. This is particularly true in the offering of securities by issuers, including hedge funds and other investment vehicles. Rule 2210(d)(1)(F) currently does not permit members to share their views on projection-related data with investors in these situations due to its restrictions on members communicating projected performance information.

Even so, the proposed changes would provide safeguards for communications that contain projections of performance or targeted returns, including requiring members to

adopt and implement policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. They would mandate that members have a reasonable basis for the criteria used and assumptions made in calculating the projections of performance or targeted returns.

The proposed changes also would require a member to provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the projected performance or targeted return, and to understand the risks and limitations of using projected performance or targeted returns in making investment decisions.

The proposed rule change also would reduce investor confusion, as currently investors may receive different information about the same investments, depending on the financial professional. As discussed above, the proposed changes recognize that investors are already able to receive projected performance or targeted returns in communications from parties other than broker-dealers and, to address this discrepancy, the changes more closely align the ability of broker-dealers to offer projections to investors with the ability of issuers and other non-member firms, including RIAs consistent with the IA Marketing Rule, to offer projections. The proposed rule change would allow investors to receive and compare projections provided by members with projections from other entities, with appropriate safeguards designed to protect investors.

FINRA believes that investors would be better protected if issuers offered their securities through broker-dealers, which are subject to a much more rigorous set of rules governing communications than issuers, and that are subject to regulatory oversight from

the Commission, FINRA and state securities regulators. The proposed rule change may enable more issuers to use broker-dealers for their securities offerings. In addition, investors who are retail customers under Reg BI will receive the additional protections of that rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

1. Regulatory Need

Among other things, commenters during the retrospective review of rules governing communications with the public expressed concerns that the current prohibition on projections of performance imposes undue restrictions on broker-dealer customers.⁶⁷ The amendments in this proposed rule change are intended to better align the treatment of projections of performance and targeted returns in broker-dealer communications under FINRA Rule 2210 with the treatment of hypothetical performance information in investment adviser communications under the IA Marketing Rule. FINRA

⁶⁷ See letters responding to Regulatory Notice 14-14 (April 2014) from the Financial Services Roundtable (May 22, 2014) and the Securities Industry and Financial Markets Association (May 23, 2104), both available at www.finra.org.

believes that such further alignment will help investors, including by reducing investor confusion and enabling them to receive additional information when making investment decisions and by increasing regulatory harmonization while maintaining investor protection safeguards.

2. Economic Baseline

The economic baseline used to evaluate the impact of the proposed rule change is the current regulatory framework. This baseline serves as the primary point of comparison for assessing economic impacts, including the incremental benefits and costs of the proposed rule change.⁶⁸

Currently, absent an applicable exception⁶⁹ from the general prohibition on members projecting performance in their communications, members and their representatives may not present investors with performance projections or targeted returns regarding various investment opportunities. However, some of these members may have customers that already have access to or already receive projections-related communications from other sources, such as a member that is dually registered as an investment adviser and acting in an advisory capacity, a member's investment adviser affiliate, or an unaffiliated third-party investment adviser. For example, some dually registered members and dually registered representatives already communicate information regarding projected performance to their advisory clients.⁷⁰ Similarly,

⁶⁸ Thus, the economic baseline used here does not include the rule amendments that were part of SR-FINRA-2023-016.

⁶⁹ See supra notes 5-13 and accompanying text.

⁷⁰ FINRA estimates that, as of December 31, 2024, approximately 410 member firms are dually registered as broker-dealers and investment advisers. FINRA further estimates that these dually registered firms have approximately 416,000

members that are not registered as investment advisers may have registered representatives that are dually registered and work for both the broker-dealer member and a third-party investment adviser.⁷¹ Members and their registered representatives that are also investment advisers may not be impacted by the proposed rule change, since they are already able to provide this information when acting in an advisory capacity.

FINRA also notes that investors may be solicited to purchase individual securities directly by an issuer without the involvement of a broker-dealer, and issuers often use performance projections and targeted returns in their communications.

3. Economic Impacts

FINRA anticipates that the proposed rule change will potentially impact all investors who currently do not have access to projections-related communications but could under the proposed rule change, and those members that serve these investors. In practice, however, FINRA expects that the proposed rule change will primarily impact

registered representatives, and 247,000 (or about 59 percent) of these individuals are dually registered both as investment adviser and broker-dealer representatives. FINRA estimates that approximately 130 of the dually registered firms have a total of 1800 individuals that are solely registered as investment adviser representatives. FINRA notes that in addition to the dually registered representatives, investment adviser-only representatives may also be providing projections-related communications to their advisory clients. Individuals who are registered with more than one member firm are counted more than once in the above statistics.

⁷¹ FINRA estimates that, as of December 31, 2024, approximately 2,800 member firms are only registered as broker-dealers and these firms have approximately 278,000 registered representatives. FINRA further estimates that approximately 83,000 of these individuals are dually registered both as investment adviser and broker-dealer representatives. These dually registered representatives may have customers with access to projections-related communications through their investment advisory relationships with third-party investment advisers. Individuals that are registered with more than one member firm are counted more than once in the above statistics.

institutional and other sophisticated investors and those members that serve them. The proposed rule change require, as discussed earlier in Item II.A.1, that “the member [adopt and implement] written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication.”⁷² Thus, FINRA expects that projections-related communications will only be distributed to investors who have the financial expertise and resources to evaluate investments and to understand the assumptions and limitations associated with such projections. To the extent that a member makes this determination with respect to recommendations of securities transactions or investment strategies involving securities to particular retail customers, Reg BI would further protect the retail customers, as it requires a broker-dealer to act in a retail customer’s best interest when recommending a securities transaction or investment strategy involving securities.

The impact of the proposed rule change likely will be most pronounced for products such as private placements and services such as providing investors with customized investment strategies where there exists little publicly available information, and where the member or its representatives have access to relevant non-public information and expertise. In such instances, projections-related communications provided by the member may be especially valuable to investors given the dearth of other available information. At the same time, such instances may also represent situations with elevated risks to investors, as projections in these instances may be harder to validate. However, the obligation for members to have a reasonable basis for projections and targeted returns would mitigate this risk.

⁷² See proposed Rule 2210(d)(1)(F)(iv)a.

Anticipated Benefits

The proposed rule change would allow members to better inform investors about an individual security, asset allocation, or other investment strategy and the underlying assumptions upon which related recommendations are based. FINRA anticipates that these benefits primarily would accrue to investors who would now be eligible to receive projections of performance and who currently do not have enough information about the specific investment or strategy to make their own projections. The proposed rule change may also potentially benefit investors who make their own projections and can now compare them to projections furnished by their broker-dealer or can compare the broker-dealer's projections against those from other sources. These sources may include, for example, investment advisers, the securities' issuer, or some other intermediary who also provides projections.

For these benefits to accrue, the performance projections or targeted returns must be objectively informative, and the magnitude of benefit depends on the extent to which customers value these communications and find them informative. In addition, the proposed rule change would reduce the effort needed for dually registered firms to comply with two sets of regulatory standards for communications containing projections or targeted returns and would eliminate confusion for investors that currently receive different information about the same investments from different sources. The same would apply to issuers that sell their products through both investment adviser and broker-dealer channels.

Anticipated Costs

Members that choose to communicate performance projections or targeted returns, as allowed by the proposed rule change, would also incur costs associated with supervising these communications and complying with the proposed rule change's conditions. Such efforts would include adopting and implementing written policies and procedures that are reasonably designed to ensure compliance with the proposed rule change's requirements and monitoring the effectiveness of those policies and procedures. In addition, the proposed rule change may impose costs on both members and investors where an investor misunderstands or misuses a projection that they would not otherwise receive to make an investment choice that is inconsistent with their investment objectives. If, as a result, investors suffer investment losses, they may seek recourse. This may result in expenses, including legal expenses, for such investors. Since members are not required to provide projections to investors, some members may consider doing so only if they anticipate that the benefits of providing projections exceeds the expected risks and costs.

Competitive Effects

Currently, members that are not also registered as investment advisers are unable to provide projections or targeted returns to their customers except as permitted under Rule 2210(d)(1)(F). At the same time, members that are dually registered or that employ dually registered persons may already provide some customers with performance projections beyond those allowed under Rule 2210 in their capacities as RIAs or investment adviser representatives. The proposed rule change would create comparable investment adviser and broker-dealer standards for communications related to

performance projections and targeted returns, thus more closely aligning the regulatory treatment among broker-dealers, investment advisers, and issuers with respect to such communications.

4. Alternatives Considered

In considering how to best meet its regulatory objectives, FINRA considered alternatives to certain aspects of this proposed rule change.

In particular, as described in detail in Item II.A.1, subsections “Previous Proposals” and “Comparison to November 2023 Rule Change,” FINRA previously filed with the Commission the November 2023 rule change, which would have created a narrower exception to Rule 2210’s general prohibition on performance projections. The narrower exception included a threshold limitation on which investors could receive projections or targeted returns from broker-dealers.⁷³

When compared to the November 2023 rule change, FINRA believes that the elimination of such a threshold limitation, among other aspects of the proposed rule change, will be more effective in reducing investor confusion, better serve investors by enabling them to receive additional information when making investment decisions, and increase regulatory harmonization while maintaining investor protection safeguards.

⁷³ As discussed above, the November 2023 rule change would have permitted projections of performance and targeted returns only in (i) institutional communications and (ii) communications to qualified purchasers as defined under the ICA and knowledgeable employees as defined in ICA Rule 3c-5 in connection with specified exempt private offerings that are excluded from filing under FINRA Rules 5122 and 5123. See supra notes 20-28 and accompanying text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on this proposed rule change. However, as noted above, FINRA has solicited comment on previous rulemaking initiatives relating to members' ability to project performance. Specifically, in February 2017, FINRA published Regulatory Notice 17-06, requesting comment on proposed amendments that would have created an exception to the rule's prohibition on projecting performance to permit members to distribute customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified conditions. As noted above, FINRA received 23 comment letters, 21 commenters of which supported the proposal, and two commenters opposed the proposal.⁷⁴

In response to the SEC's adoption of the IA Marketing Rule, SEC staff comments, and industry comments, including comments to Regulatory Notice 17-06 that focused on the ability to provide projections on single securities for institutional and other sophisticated investors, FINRA revised its approach. As discussed above, FINRA filed with the Commission the November 2023 rule change, which would have allowed a member to include projections of performance and targeted returns in specified communications to institutional investors. The SEC received 10 comments in response to

⁷⁴ See supra note 19 and accompanying text. Because the current proposed rule change represents a significant shift from the approach set forth in Regulatory Notice 17-06, both in terms of the scope of the proposed exception from the general prohibition, as well as the proposed conditions, a comprehensive discussion of the comments to Regulatory Notice 17-06 is not relevant here. For a full discussion addressing the comments to Regulatory Notice 17-06, see Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016).

the initial rule filing, and four additional comments after instituting proceedings.⁷⁵ A full discussion of those comments, and FINRA’s responses, are available in letters FINRA submitted to the Commission in that rulemaking. In general, FINRA believes that the current proposed rule change addresses comments that supported the overall intent of the November 2023 rule change and the ability for members to use projections and targeted returns in some circumstances, but that advocated for further regulatory harmonization. As discussed above, as compared to the November 2023 rule change, the proposed rule change more closely aligns the treatment of projections of performance and targeted returns for broker-dealers with similar requirements for investment advisers under the IA Marketing Rule, while also maintaining investor protection safeguards. Accordingly, the proposed rule change would lessen the regulatory inconsistencies regarding the use of performance projections between broker-dealers and stand-alone investment advisers and would minimize the current opportunities for regulatory arbitrage.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

⁷⁵ See Securities Exchange Act Release No. 98977 (November 17, 2023), 88 FR 82482 (November 24, 2023) (Notice of Filing of File No. SR-FINRA-2023-016) and Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated February 22, 2024 (“Initial Response to Comments”) (including, as Attachment A, an Alphabetical List of Commenters to File No. SR-FINRA-2023-016); see also Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated July 17, 2024 (discussing and rebutting comments the Commission received in response to its notice and order in the Federal Register soliciting comments on the Partial Amendment SR-FINRA-2023-016 and instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act).

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2026-004 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2026-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable

information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2026-004 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁶

Jill M. Peterson
Assistant Secretary

⁷⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

2210. Communications with the Public

(a) through (c) No Change.

(d) Content Standards

(1) General Standards

(A) through (E) No Change.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; [and]

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure

concerning the risks that may impede achievement of the price target; and

(iv) A communication that projects the performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, provided that the member:

a. adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication;

b. has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retains written records supporting the basis for such criteria and assumptions; and

c. provides sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected

performance or targeted return might differ from actual performance.

(2) through (9) No Change.

(e) through (g) No Change.

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