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June 30, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File No. SR-FINRA-2026-004 (Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)) – Response to Comments

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this letter in response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing (the “Proposal”). As initially filed (“Initial Rule Filing”), the Proposal would amend FINRA Rule 2210 (Communications with the Public) to 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.

The Commission published a notice seeking comment on the Initial Rule Filing in the Federal Register on February 25, 2026.¹ The Commission received 12 comment letters in response to the Initial Rule Filing Notice.² On April 7, 2026, FINRA consented to an extension of the time period for the SEC to take action on the Proposal until May 26, 2026. On May 20, 2026, the SEC issued an order pursuant to Section 19(b)(2)(B) of the Securities Exchange Act (“Exchange Act”) to institute proceedings to determine whether to

¹ See Securities Exchange Act Release No. 104877 (February 20, 2026), 91 FR 9308 (February 25, 2026) (Notice of Filing of File No. SR-FINRA-2026-004) (“Initial Rule Filing Notice”).

² See Attachment A for the list of commenters and the abbreviations assigned to the commenters.

approve or disapprove the proposed rule change (“OIP”).³ The SEC received three comment letters in response to the OIP.⁴

In light of the comments received, and as explained in more detail below, FINRA proposes to amend the Proposal, as set forth in Partial Amendment No. 1, to remove the Initial Rule Filing’s express “reasonable basis” language with respect to the criteria used and assumptions made in calculating projections. While the rule text would no longer include an express reasonable basis requirement, members would still have to comply with Rule 2210’s general content standards, which provide equivalent protection.⁵ In addition, as amended, the Proposal would change its approach with respect to the Initial Rule Filing’s requirement to disclose the reasons why a projection might differ from actual performance or whether a projection is net of anticipated fees and expenses. The Proposal would remove the express language in the Initial Rule Filing requiring such disclosure and instead rely on Rule 2210’s existing content standards that generally require disclosure of sufficient information to ensure that statements are clear and not misleading within the context in which they are made. Lastly, FINRA is amending the Initial Rule Filing to require members to maintain written records concerning the source of any projection of performance or targeted return used in a communication.

The following discusses Partial Amendment No. 1, as well as FINRA’s responses, by topic, to the material points raised in the comments on both the Initial Rule Filing and those in response to the OIP.⁶

³ See Securities Exchange Act Release No. 105524 (May 20, 2026), 91 FR 30750 (May 26, 2026) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2026-004).

⁴ See letters from James Hunter Poole, Executive Chairman & CEO, Obelisk Tech Systems Inc., to Vanessa A. Countryman, Secretary, SEC, dated May 27, 2026 (“Obelisk”); James P. Dowd, Chief Executive Officer, North Capital Private Securities, to Sherry R. Haywood Assistant Secretary, SEC, dated June 2, 2026 (“North Capital 2”); and Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Fund Association, to Vanessa A. Countryman, Secretary, SEC, dated June 16, 2026 (“MFA 2”).

⁵ See Rule 2210(d)(1)(A), (B) and (F).

⁶ Accordingly, please consider this letter also to be FINRA’s rebuttal to the comment letters submitted in response to the OIP.

I. Initial Rule Filing

Rule 2210 currently prohibits projections of performance or targeted returns in member communications, subject to specified exceptions.⁷ The Initial Rule Filing would amend Rule 2210 to permit 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.

First, the member would be required 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. Second, the member would be required to have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and to retain written records supporting the basis for such criteria and assumptions. Third, the member would be required 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.⁸

II. General Support for the Initial Rule Filing; Scope of Permissible Performance in Member Communications

The majority of commenters generally supported amending Rule 2210 to permit projections of performance and targeted returns in member communications.⁹ However,

⁷ See Rule 2210(d)(1)(F).

⁸ See Initial Rule Filing Notice, 91 FR at 9310.

⁹ See CAI; IAA; ICI; IPA; MFA 1; MMI; Monument; North Capital 1; SIFMA; Simpson Thacher. In response to the OIP, Obelisk submitted a 59-page comment letter, together with a 56-page attachment entitled “Master Administrative Record and Sworn Declaration, Regulation A Compliance Burden – Capital Formation Reform.” Obelisk’s submission does not comment on the substance of the Proposal, and much of the submission is outside the scope of this proposed rule filing. For example, the comment letter cites statutes or rules that do not apply to the Commission’s review of the Proposal, or asks whether the requirements for Commission approval have been met without specifying which parts of the

many of these commenters suggested further alignment with the performance standards for registered investment adviser (“RIA”) advertisements under the Investment Advisers Act of 1940 (“Advisers Act”) Marketing Rule (“Marketing Rule”).¹⁰

Several commenters suggested that the Initial Rule Filing is too limited because it only addresses projections of performance and targeted returns and should be more completely aligned with the Marketing Rule to address presentations of other types of performance.¹¹ Some commenters suggested that having different regulatory frameworks creates operational and compliance challenges for broker-dealers.¹² Some commenters

Proposal Obelisk is concerned with. Accordingly, FINRA declines to respond to Obelisk’s comment letter.

¹⁰ See 17 CFR 275.206(4)-1(d). See also 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)) (“Marketing Rule Release”). See, e.g., ICI (viewing the Initial Rule Filing “as an incremental step toward harmonization with the SEC standards”); SIFMA (stating that an “additional exception to the general prohibition for performance projections and targeted returns is positive . . . [h]owever, we believe FINRA can align Rule 2210 with the Marketing Rule further”); IAA (viewing the Initial Rule Filing as “an important step toward ensuring investors receive consistent and meaningful information in performance-related communications”); Simpson Thacher (stating that the Initial Rule Filing serves as “an important, albeit initial, step to better aligning the requirements for FINRA members and investment advisers”); Monument (recommending that “FINRA further align its rules more fully with the performance standards in the Marketing Rule”).

¹¹ See, e.g., IAA (stating that FINRA should extend the Initial Rule Filing to encompass all forms of hypothetical performance permitted under the Marketing Rule); ICI; MFA 1; MMI; Monument; SIFMA (suggesting that the Initial Rule Filing does not adequately justify different treatment with respect to the other types of hypothetical performance allowed under the Marketing Rule); Simpson Thacher.

¹² See, e.g., MMI (noting competitive disadvantages, particularly for dual registrants and for sponsors and investment advisers that distribute materials through broker-dealer channels); ICI (suggesting that even slight differences in applicable communication standards for broker-dealers and investment advisers are difficult to operationalize and potentially confusing to investors); MFA 1 (stating that divergences between FINRA and SEC rules governing the same communications impose unnecessary compliance burdens on market participants and broker-dealers without corresponding investor protection benefits).

suggested that the Initial Rule Filing's approach would limit information to some investors and would create potential confusion, particularly where investors receive uneven information about the same investment strategies depending on the capacity of the party providing the information.¹³

Commenters also specifically suggested that backtested and model performance should be permissible in member communications in a manner consistent with the Marketing Rule.¹⁴ Commenters believe that backtested performance is a helpful metric in evaluating investments, particularly for new strategies or strategies lacking current performance.¹⁵ Some commenters asserted that sophisticated and institutional investors in particular rely on backtested and model performance.¹⁶ Some commenters suggested that prohibiting broker-dealers from communicating backtested performance leads to materially different levels of information being provided to investors evaluating identical products.¹⁷

In addition, commenters suggested that the Proposal be amended to permit the use of related performance, which these commenters consider to be a helpful metric in

¹³ See IAA; MFA 1; Tobin (suggesting the Initial Rule Filing is unworkable because, among other things, it discourages sharing otherwise helpful financial models and forward-looking information with investors; raising general concerns with respect to the rationale for the Initial Rule Filing and further suggesting that investors generally benefit from information regarding anticipated future outcomes and that the Initial Rule Filing fails to provide broker-dealers with clear guidance as to what forward-looking information can be communicated to customers); SIFMA (stating that investor confusion may result from uneven access to information about the same investment strategies based solely on the regulatory channel through which the communication is delivered); ICI; MMI.

¹⁴ See MMI (suggesting also that the Initial Rule Filing's view of backtested performance relies on dated studies and that academic literature has advanced with respect to frameworks to validate backtesting); IAA; MFA 1; MFA 2; Monument; SIFMA; Tobin.

¹⁵ See SIFMA (stating that backtested performance is a core analytical tool for explaining investment methodologies, model changes, and new strategies for which no live performance history exists); MFA 1; MFA 2; Monument.

¹⁶ See IAA; Monument; Simpson Thacher; Tobin.

¹⁷ See SIFMA (suggesting that a fair and balanced standard, similar to that which applies under the Marketing Rule, would assuage concerns that backtested performance could be misleading); see also IAA; MFA 1; MMI; Tobin.

evaluating investments, particularly for new strategies or strategies lacking current performance.¹⁸ Simpson Thacher noted that FINRA interpretive guidance allows, in some cases, related performance in communications to qualified purchasers and institutional investors.

Simpson Thacher also commented that the Initial Rule Filing does not specifically address portfolio or investment characteristics or the presentation of gross versus net of fees performance.¹⁹ In addition, several commenters suggested that FINRA should include proposed rule text that specifically allows members to present forms of performance that are developed based on actual returns (e.g., permit the use of extracts from composites, composites of extracts, or track records based on the aggregation of actual positions across various accounts/funds).²⁰

While FINRA recognizes commenters' desire to amend the Proposal to include additional performance standards beyond those for the presentation of projections of performance and targeted returns, such amendments are beyond the scope of this proposed rule filing. Accordingly, without expressing a view as to the merits of amending Rule 2210 and without foreclosing future potential amendments to adopt standards for other performance categories, FINRA declines to do so as part of this proposed rule filing.

III. Written Supervisory Procedures; Financial Expertise and Resources of Intended Audience

As discussed above, the Initial Rule Filing would require a member that presents projected performance or a targeted return to adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely

¹⁸ See MFA 1; MFA 2; Monument; SIFMA.

¹⁹ See Simpson Thacher (noting that SEC staff has issued guidance allowing investment advisers to present certain portfolio or investment characteristics (e.g., sector or geographic returns) on a gross of fee basis without also showing the corresponding characteristics calculated after the deduction of all fees and expenses; additionally stating that SEC guidance further suggests that such portfolio or investment characteristics are not necessarily "performance," subject to the standards outlined in the Marketing Rule).

²⁰ See IAA (stating that such presentations are derived from real investment decisions and outcomes); MMI (stating that carved-out and subset track records are derived from actual investments and are not hypothetical); MFA 1 (noting particular concerns with respect to private fund marketing material, which often include a track record derived from a subset of actual investments); MFA 2.

financial situation and investment objectives of the intended audience of the communication.

IPA requested clarification of this standard. It noted that the Initial Rule Filing Notice, when discussing the rule amendment, stated that the standard “will ensure that projections of performance and targeted returns are available only to investors who have the financial expertise and resources to understand the risks and limitations of these types of presentations.”²¹ IPA expressed concern that the statement could be read to alter the proposed rule text’s requirements, since it would require a member to confirm that every investor who receives such a communication possesses such expertise and resources.

Monument commented that the requirement to adopt policies and procedures to ensure communications are relevant to the likely financial situation and investment objectives of recipients is duplicative of FINRA Rule 2111(b)’s suitability obligations with respect to institutional investors. In addition, MMI suggested various approaches that FINRA could take to provide safe harbors and additional guidance with respect to the requirement.²²

MMI also requested that FINRA confirm that broker-dealers may look to SEC staff guidance under the Marketing Rule with respect to what would be considered an appropriate audience for projected performance, and that FINRA not adopt interpretations of audience appropriateness that differ from the SEC staff’s interpretations.²³ MMI further suggested that FINRA clarify that the appropriate audience requirement does not impose a

²¹ Initial Rule Filing Notice, 91 FR 9308, 9313-14.

²² See MMI (suggesting that, for a dual registrant, FINRA should clarify that certain customer information obtained in an advisory capacity may be relied upon for assessing an appropriate audience for communications; suggesting safe harbors for communications distributed only to institutional investors (as defined in FINRA Rule 2210(a)(4)), qualified purchasers (as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 (“ICA”)), and accredited investors invested in funds relying on ICA Section 3(c)(1); suggesting a safe harbor that expressly permits dual registrants to use communications prepared in compliance with the Marketing Rule across advisory and broker-dealer channels).

²³ See Division of Investment Management, Marketing Compliance - Frequently Asked Questions (updated January 15, 2026) (“Marketing Rule FAQs”), <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/marketing-compliance-frequently-asked-questions>.

de facto requirement to limit fund projections to institutional investors or qualified purchasers only.

FINRA believes that its proposed written policies and procedures requirements for the use of projections of performance and targeted returns is appropriate with respect to the presentation of such performance. FINRA notes that the Marketing Rule prohibits an RIA from including hypothetical performance²⁴ in an advertisement unless, among other things, the RIA “adopts and implements 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.”²⁵ As noted in the Marketing Rule Release, this condition is intended to “ensure that hypothetical performance is relevant to the *likely* financial situation and investment objectives of the *intended audience*.”²⁶ The Release states that “likely” was used “to clarify that an adviser is not required to know the actual financial situation or investment objectives of each investor that receives hypothetical performance.”²⁷ Similarly, the Release states that the Commission chose the term “intended audience” in its final rule text “to clarify that advisers can comply with this condition, as well as other conditions related to hypothetical performance, by grouping investors into categories or types, and to emphasize that an investor might not be a natural person.”²⁸

FINRA recognizes that the Marketing Rule applies only to registered investment adviser advertisements and not to communications by broker-dealers, and that any guidance that the Commission or its staff provides with respect to the Marketing Rule would not apply to FINRA rules or the presentation of projected performance or targeted returns by broker-dealers. Accordingly, while FINRA proposes to adopt a similar approach with respect to the proposed written policies and procedures requirement, it does not intend

²⁴ “Hypothetical performance” is defined under the Marketing Rule to include, among other things, “[t]argeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement.” See 17 CFR 275.206(4)-1(e)(8)(i)(C).

²⁵ See 17 CFR 275.206(4)-1(d)(6)(i).

²⁶ See Marketing Rule Release, 86 FR at 13083 (italics in original).

²⁷ See id.

²⁸ See id.

to delegate interpretation of this or any other provision in the Proposal to the Commission or its staff based on their interpretation of the Marketing Rule.²⁹

With respect to any overlap between the Initial Rule Filing and Rule 2111(b), FINRA notes that Rule 2111's customer-specific suitability obligation addresses recommendations to non-retail customers of a securities transaction or investment strategy involving a security or securities.³⁰ In contrast, the proposed standards for projections of performance and targeted returns would apply to all communications and would not be triggered by any specific recommendation. Further, not all projections of performance or targeted returns would be relevant to all customers, institutional or otherwise. Accordingly, FINRA does not view the proposed amendments to Rule 2210 as duplicative of Rule 2111(b).

FINRA does not believe it is necessary to provide any specific safe harbors for member communications that include presentations of performance or targeted returns. The Initial Rule Filing does not prescribe a particular methodology for determining the appropriate audience for member communications that include projections of performance or targeted returns.³¹ To be clear, nothing in Partial Amendment No. 1 would specifically require presentations of projected performance or targeted returns to be included only in communications with institutional investors. In addition, nothing in the Proposal specifies sources of information that a member must use to determine the appropriate audience for a communication that includes projected performance or a targeted return.

²⁹ Similarly, should the Commission approve the Proposal, FINRA staff guidance concerning the Proposal would have no bearing on how the Marketing Rule applies to RIA communications.

³⁰ Rule 2111 does not apply to recommendations to retail customers as defined in Exchange Act Regulation Best Interest, 17 CFR 240.15l-1 ("Reg BI"). See FINRA Rule 2111.08.

³¹ See Initial Rule Filing Notice, 91 FR at 9310 (stating that the rule "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").

IV. Retail Investors and Recommendations

NASAA commented that FINRA should allow projections only in member communications to retail investors that include a recommendation of a securities transaction or investment strategy involving securities.³² NASAA also recommended that FINRA require that broker-dealer written policies and procedures be designed to ensure that retail investors receiving projections have the financial expertise and resources to understand the risks and limitations of such presentations.³³

FINRA does not agree that members should only be allowed to include projections in communications that make recommendations. To the extent that a member is recommending a securities transaction or investment strategy involving securities, Reg BI would protect retail investors, as it requires a broker-dealer to act in a retail customer's best interest when making such recommendations and to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.³⁴ Even in the absence of a specific recommendation, as explained in the Initial Rule Filing, Rule 2210's content standards and the proposed performance standards would provide safeguards to ensure broker-dealer customers, particularly retail customers, receive appropriate information.

As discussed above, FINRA intends for member communications including presentations of projected performance or targeted returns to only be distributed if the member has adopted 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. FINRA intends for communications that include such performance information to only be distributed to investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations. This approach is consistent with FINRA's continued view, as stated in the Initial Rule Filing, that members generally would not be allowed to include projections in communications directed to a

³² See NASAA (stating that, under the Initial Rule Filing, projections can be offered and shared with customers outside of a specific recommendation).

³³ See NASAA (stating that nothing in proposed Rule 2210 itself would require broker-dealers to directly assess the financial expertise and resources of the investors to whom projections are directed).

³⁴ See 17 CFR 240.15l-1(a)(1), (a)(2)(iv).

mass audience or intended for general circulation, including to a general retail investor audience.³⁵

V. Reasonable Basis Requirement

Several commenters stated that the Initial Rule Filing’s requirement that members have a reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns in member communications is not warranted because it is duplicative, burdensome, or unclear.³⁶ Commenters recommended that the reasonable basis requirement be replaced with a disclosure framework and fair and balanced standards.³⁷ Commenters further suggested that additional guidance would be needed to inform the reasonable basis assessment.³⁸

In addition, several commenters stated that the proposed reasonable basis requirement would create challenges for broker-dealer communications that include projections of performance from third parties, such as a fund or its distributor, as broker-dealers would not have underlying data needed to undertake extensive due diligence for such performance.³⁹ Additionally, some commenters suggested that broker-dealer

³⁵ See Initial Rule Filing Notice, 91 FR 9308, 9310-11.

³⁶ See ICI (noting that Rule 2210(d)(1)(A) already requires that “[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service”); MFA 1; MMI; Monument (suggesting that the reasonable basis requirement would unnecessarily burden member firms and placement agents with onerous and duplicative due diligence and recordkeeping requirements in connection with marketing private funds); SIFMA (stating that, when there is a recommendation of a securities transaction or investment strategy involving securities to a retail customer, Reg BI applies and requires a member to have a reasonable basis to believe the recommendation is in the best interest of the retail customer).

³⁷ See ICI; MFA 1; MFA 2; SIFMA.

³⁸ See ICI (stating that guidance would be helpful, particularly with respect to second-guessing if market conditions change); MMI (stating that for adviser-prepared materials guidance is needed as to what constitutes sufficient due diligence to satisfy the reasonable basis requirement).

³⁹ See ICI; MFA 1; MFA 2; MMI (stating that FINRA should provide guidance on what constitutes adequate information or diligence with respect to third-party models, including a suggested minimum checklist covering model inputs, key

communications including projections prepared by investment advisers in compliance with the Marketing Rule should be deemed to have met the reasonable basis obligation and should not require broker-dealers to independently re-derive projection calculations.⁴⁰

In response to these comments and upon further reflection, FINRA does not believe an express reasonable basis standard is needed because Rule 2210's existing content standards would preclude any unreasonable projections or targeted returns. In this regard, Rule 2210 requires all member communications to be based on principles of fair dealing and good faith, to be fair and balanced, and to provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service. Members also may not omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.⁴¹

Moreover, members are prohibited from making any false, exaggerated, unwarranted, promissory or misleading statement, claim, opinion, or forecast in any communication, nor may a member publish, circulate or distribute any communication that the member knows or has reason to know contains an untrue statement of a material fact or is otherwise false or misleading.⁴² With these standards already applicable, FINRA has not identified a set of facts where a projection or performance or targeted return lacking a reasonable basis could comply with FINRA requirements.

Although the Proposal would no longer have an express reasonable basis requirement, FINRA proposes to amend Rule 2210's recordkeeping requirements to specify that members' communications records must include information concerning the source of

assumptions, historical accuracy and validation, and known limitations); Monument; SIFMA (stating that there is uncertainty as to what would constitute a reasonable basis for the criteria used and assumptions made when a third party is responsible for the criteria and assumptions used to calculate performance projections or targeted returns – particularly since third parties often do not provide sufficient information about their criteria and assumptions to evaluate the reasonableness of their hypothetical returns).

⁴⁰ See MFA 1; MMI (suggesting also that FINRA should create a safe harbor that expressly permits dual registrants to use communications prepared in compliance with the Marketing Rule across advisory and broker-dealer channels); Monument.

⁴¹ See Rule 2210(d)(1)(A).

⁴² See Rules 2210(d)(1)(B) and (d)(1)(F).

any projection of performance or targeted return.⁴³ FINRA believes requiring firms to keep records of information relating to projections and targeted returns will help substantiate the basis for such performance presentations.

FINRA recognizes that member communications may include projections of performance or targeted returns sourced from a third party. Where a third party (affiliated or unaffiliated) has created such performance, we would expect members to continue to meet the requirements of Rule 2210's content standards. For example, members are prohibited from publishing or circulating any communication that the member knows, or has reason to know, contains any untrue statement of material fact or is otherwise false or misleading.⁴⁴

The level of due diligence necessary for members to assess presentations of performance calculated by third parties and used in member communications would depend on the facts and circumstances surrounding the communication. For example, FINRA would not generally expect a member to independently verify all of the criteria and assumptions underlying the calculation of a projection prepared by a third party. FINRA would, however, expect members to evaluate the source of such information, assess whether the available information in the projection is supported, and satisfy itself that the presentation meets the content standards of Rule 2210, as amended. Members would also need to consider the availability of information from the third party and whether such information would be necessary for a member to satisfy its Rule 2210 obligations.

VI. Treatment of Targeted Returns

Some commenters raised concerns with respect to the treatment of targeted returns, both in the Initial Rule Filing and under current Rule 2210. MMI stated that FINRA should amend the rule text or provide guidance to allow for certain targeted returns to be exempt from the Initial Rule Filing's requirement that a member have a reasonable basis for the criteria used and assumptions made in calculating a targeted return.

North Capital stated their general objection to FINRA's application of Rule 2210's general prohibition of communications that predict or project performance to targeted returns, on the ground that stating a return objective is not a prediction or projection. North Capital also suggested that the Initial Rule Filing's requirement that communications be relevant to the likely financial situation and investment objectives of the intended audience

⁴³ See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 to Partial Amendment No. 1.

⁴⁴ See Rule 2210(d)(1)(B).

is unclear because a return objective is always relevant to an investor.⁴⁵ In its subsequent comment letter, North Capital asserted that conflating a projection with a return objective or target would be a “draconian interpretation that does not advance investor protection against fraud or manipulation.” North Capital also commented that enabling investors to receive information considered to be important should promote informed decision-making by investors.⁴⁶

As discussed above, FINRA has determined to no longer include an express reasonable basis requirement in the Proposal and, accordingly, there is no need for a specific exemption from this requirement for targeted returns. While targeted returns are aspirational in nature, FINRA continues to believe that the investor protection safeguards in Rule 2210, as amended, should continue to apply to both projections and targeted returns because the intended audience of a communication may not always understand or appreciate the distinction.

Moreover, FINRA does not view requiring a communication that contains a targeted return to meet Rule 2210’s general content standards as “draconian.” Nothing in the Proposal would prevent investors from receiving information about offerings that contain a targeted return, as long as the communication complies with Rule 2210’s requirements. Accordingly, FINRA sees no need to exempt communications that contain targeted returns from Rule 2210’s general content standards.

VII. Disclosure Requirements

Two commenters asserted that, in contrast to the Initial Rule Filing, there is no express requirement under the Marketing Rule to disclose why projected performance might differ from actual performance.⁴⁷ SIFMA stated that investor protection would be maintained if FINRA were to eliminate this requirement and align Rule 2210 with the Marketing Rule’s fair and balanced standard. MMI recommended similar alignment with the Marketing Rule and stated that the Initial Rule Filing’s requirement to disclose why projected performance or targeted returns might differ from actual performance imposes operational complexity for dual registrants and for broker-dealers distributing adviser-

⁴⁵ See North Capital 1.

⁴⁶ See North Capital 2.

⁴⁷ See SIFMA; MMI (stating also that FINRA should confirm that disclosures prepared in compliance with the Marketing Rule will be deemed sufficient for purposes of Rule 2210).

prepared materials. In addition, MMI objected more broadly, on the same basis, to the Initial Rule Filing’s disclosure requirements, which would include the requirement to disclose whether the projected performance or targeted return is net of anticipated fees and expenses – which MMI claimed is not specifically required under the Marketing Rule.

In response to these comments and as stated in Partial Amendment No. 1, the Proposal would not expressly require disclosure of the reasons why a projection might differ from actual performance. In addition, the Proposal would not expressly require disclosure of whether a projection is net of anticipated fees and expenses. FINRA believes that, in retrospect, these disclosure requirements may be too narrow for communications that contain a projection of performance or targeted return, since Rule 2210’s general content standards may require different disclosures to ensure that a communication that includes a projection of performance or targeted return is fair, balanced, and not misleading.

Notably, Rule 2210 requires that “[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.”⁴⁸ In addition, Partial Amendment No. 1 generally requires that members provide “sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made calculating the projected performance or targeted returns; and (ii) the risks and limitations of using such hypothetical performance in making investment decisions.”⁴⁹ FINRA believes Rule 2210’s general content standards, together with the disclosure requirements that are specific to projections of performance and targeted returns, will help ensure that investors receive information to consider the risks and limitations of relying on such performance in determining how to invest their money.

VIII. Internal Rates of Return

Several commenters noted that the Initial Rule Filing does not address internal rates of return (“IRR”) or explain how the Proposal would impact existing guidance regarding IRR.⁵⁰ Prior FINRA guidance contained in Regulatory Notice 20-21⁵¹ and a September 30,

⁴⁸ Rule 2210(d)(1)(A).

⁴⁹ See proposed Rule 2210(d)(1)(F)(iv) in Exhibit 5 of Partial Amendment No. 1.

⁵⁰ See IAA; MFA 1; MFA 2; MMI; Monument; Simpson Thacher.

⁵¹ See Regulatory Notice 20-21 (July 2020).

2021, FINRA FAQ⁵² address marketing practices in connection with private offerings, including the presentation of IRR in member communications. In particular, FINRA has stated that “unrealized holdings have no actual performance experience, and any return metric would require its valuation to be estimated. Such metrics would represent a prohibited projection under FINRA Rule 2210(d)(1)(F).”⁵³ Several commenters asserted that IRR for actual investments or investment programs (even when based in whole or in part on IRRs of unrealized positions) is actual performance rather than a projection of performance.⁵⁴

FINRA acknowledges the commenters’ concerns regarding the discussion of IRR in Regulatory Notice 20-21 and the IRR FAQ. If the Commission approves the Proposal, FINRA will consider what additional guidance may be warranted.

IX. Exemptive Relief

CAI suggested that FINRA establish a formal exemptive relief process through which members may seek an exemption to permit the use of different types of performance presentations and product illustrations in their communications that are not expressly allowed under amended Rule 2210. FINRA does not believe exemptive relief is needed as part of the Proposal, as it only addresses projections of performance and targeted returns; creating an exemptive relief process for other types of performance is beyond its scope.

X. RILA Illustrations

CAI stated that it was their understanding that the use of projections and targeted returns contemplated by the Initial Rule Filing would be available for broker-dealer presentations of registered index-linked annuity (“RILA”) illustrations and illustrations used with other types of insurance products. CAI also suggested that FINRA should provide greater flexibility to permit members to provide illustrations in a manner similar to what FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) allows for variable annuities.

⁵² See FINRA Rule 2210 Frequently Asked Questions, section D.6 (Internal Rate of Return (IRR)), <https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation> (“IRR FAQ”).

⁵³ See IRR FAQ; see also MMI; Simpson Thacher.

⁵⁴ See IAA; Monument; Simpson Thacher.

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. Accordingly, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass retail investor audience because a member could not form any expectations about their financial situation or investment objectives.

Whether a RILA or other insurance product illustration that is intended for a mass audience contains a projection of performance will depend on the facts and circumstances of the communication. In addition, without commenting on the merits of the requested relief, FINRA notes that amendments to Rule 2211 are outside the scope of the Proposal.

XI. Recordkeeping

MMI stated that FINRA should specify that existing records maintained by dual registrants to satisfy the Marketing Rule, including policies and procedures, compliance reviews, and assumption documentation, may serve as the foundation for satisfying the dual registrant's broker-dealer recordkeeping obligations under the Proposal, as supplemented as appropriate by a brief memorandum documenting the broker-dealer's independent review. MMI further stated that FINRA should clarify that existing records maintained by dual registrants in connection with Marketing Rule compliance satisfy corresponding broker-dealer recordkeeping obligations under Rule 2210.

As stated herein, FINRA is proposing to revise Rule 2210's recordkeeping provisions to require a member to maintain records of information concerning the source of any projection of performance or targeted return.⁵⁵ Members are already required to keep records of information concerning the source of any statistical table, chart, graph, or other illustration used in a communication.⁵⁶ Accordingly, FINRA does not believe requiring firms to maintain this additional information would be overly burdensome. However, because investment advisers are subject to different recordkeeping standards, FINRA cannot categorically conclude that maintaining records required by the Marketing Rule and other Advisers Act rules would satisfy the requirements of this proposed amendment.

XII. Capital Acquisition Broker Rules

Monument suggested that the standards for projections in communications to institutional investors should be similar to those applicable to Capital Acquisition Broker

⁵⁵ See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 of Partial Amendment No. 1.

⁵⁶ See Rule 2210(b)(4)(A)(iv).

(“CAB”) communications under the CAB Rules.⁵⁷ Monument stated that the CAB rules apply only to brokers marketing unregistered securities to institutional investors and that such rules do not prohibit the use of projections in any form.

FINRA notes that CABs are subject to an entirely separate rulebook that is specifically limited to CABs approved by FINRA to engage solely in specified, limited activities.⁵⁸ The proposed changes to Rule 2210 contemplate that broker-dealers would be permitted to deliver projections in communications to a broader range of investors (subject to specified conditions) than those who interact with CABs, and thus FINRA does not believe that the CAB Rules’ communications standards are appropriate for non-CAB firms.

XIII. Current FINRA Staff Guidance on the Presentation of Performance

Over the years, FINRA has issued guidance in the form of interpretive letters, Regulatory Notices, FAQs, and other means that addresses how members may present performance in their communications. Should the Commission approve the proposed changes as outlined in Partial Amendment No. 1, FINRA will consider whether such guidance should be modified or withdrawn.

FINRA believes that the foregoing responds to the material issues raised by the commenters to the Proposal. If you have any questions, please contact me at (240) 386-4534, email: joe.savage@finra.org.

Best regards,

Joseph P. Savage

⁵⁷ See CAB Rule 221.

⁵⁸ See CAB Rule 016(c) (definition of capital acquisition broker).

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2026-004

1. Meredith J. Abrams, David W. Blass, & Joshua Kim, Simpson Thacher & Bartlett LLP (“Simpson Thacher”) (March 18, 2026)
2. Gail C. Bernstein & Sanjay Lamba, Investment Adviser Association (“IAA”) (March 17, 2026)
3. Bernard V. Canepa, Securities Industry and Financial Markets Association (“SIFMA”) (March 18, 2026)
4. Anya Coverman, Institute for Portfolio Alternatives (“IPA”) (March 18, 2026)
5. Molly M. Diggins, Monument Group, Inc. (“Monument”) (March 18, 2026)
6. James P. Dowd, North Capital Private Securities (“North Capital 1”) (February 27, 2026)
7. Marni Rock Gibson, North American Securities Administrators Association, Inc. (“NASAA”) (March 18, 2026)
8. Jennifer W. Han, Managed Funds Association (“MFA 1”) (March 20, 2026)
9. Clifford Kirsch & Eric Arnold, Eversheds Sutherland (on behalf of the Committee of Annuity Insurers) (“CAI”) (March 18, 2026)
10. Craig Pfeiffer & Kenneth Bossen, Money Management Institute (“MMI”) (March 18, 2026)
11. Matthew Thornton & Erica Evans, Investment Company Institute (“ICI”) (March 18, 2026)
12. Justine Tobin, Tobin & Company Securities LLC (“Tobin”) (March 18, 2026)