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October 14, 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.

Background

The Proposal, as amended in Partial Amendment No. 1 ("Amended Proposal"), would remove the Initial Rule Filing's express "reasonable basis" language with respect to the criteria used and assumptions made in calculating projections and instead rely on Rule 2210's general content standards, which provide equivalent protection.[1] In addition, the Amended Proposal would remove the express language in the Initial Rule Filing that would require a communication that contains a projection of performance or targeted return to disclose the reasons why a projection might differ from actual performance or whether a projection is net of anticipated fees and expenses. Instead, members would be required to comply with Rule 2210's existing content standards, which, among other things, require disclosure of sufficient information to ensure that statements in member communications are fair and balanced and not misleading within the context in which they are made.

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

Lastly, the Amended Proposal would add a new requirement that members maintain written records concerning the source of any projection of performance or targeted return used in a communication.

The Commission published a notice seeking comment on the Initial Rule Filing in the Federal Register on February 25, 2026.[2] The Commission received 12 comment letters in response to the Initial Rule Filing Notice.[3] 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 approve or disapprove the proposed rule change ("OIP").[4] The SEC received three comment letters in response to the OIP.[5] FINRA responded to the comments and filed Partial Amendment No. 1 based on the comments received by the SEC.[6]

On July 7, 2026, the SEC published a notice in the Federal Register to solicit comments on Partial Amendment No. 1.[7] The SEC received nine comment letters in

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2 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").

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

4 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).

5 See letters from James Hunter Poole, Executive Chairman & CEO, Obelisk Tech Systems Inc., dated May 27, 2026; James P. Dowd, Chief Executive Officer, North Capital Private Securities, dated June 2, 2026; and Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Fund Association, dated June 16, 2026.

6 See letter from Joseph Savage, Vice President and Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated June 30, 2026 ("Response Letter") and Partial Amendment No. 1 to SR-FINRA-2026-004 filed on June 30, 2026, https://www.finra.org/rules-guidance/rule-filings/sr-finra-2026-004.

7 See Securities Exchange Act Release No. 105845 (July 2, 2026), 91 FR 41723 (July 7, 2026) (Notice of Partial Amendment No. 1 to Proposed Rule Change to Amend FINRA Rule 2210) ("Notice").

response to that Notice.[8] Four commenters generally supported the Amended Proposal – with some recommendations to provide additional guidance, include specified safe harbors, and broaden the scope of permissible performance presentations under Rule 2210.[9] Music suggested an alternative approach to Rule 2210 that would apply the Uniform Prudent Investor Act ("UPIA") to member communications that include projections of performance or targeted returns.[10] PIABA and Civilian objected to the Amended Proposal on grounds that it would remove investor safeguards. Obelisk asserted that the Amended Proposal failed to provide a sufficient basis to support the SEC's required findings under Section 19(b)(2)(C) of the Exchange Act.[11] The following is FINRA's response to the comments.

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8 See letters from James H. Poole, Executive Chairman and Chief Executive Officer, Obelisk Tech Systems, Inc. (July 22, 2026) ("Obelisk 2"); Michael C. Bixby, President, Public Investors Advocate Bar Association (July 24, 2026) ("PIABA"); Bernard V. Canepa, Managing Director & Associate General Counsel, SIFMA (July 27, 2026) ("SIFMA 2"); Matthew Thornton, Deputy General Counsel, and Erica Evans, Assistant General Counsel, Investment Company Institute (July 28, 2026) ("ICI 2"); Honey J. Music (July 28, 2026) ("Music"); Gail C. Bernstein, General Counsel and Head of Public Policy, and Sanjay Lamba, Associate General Counsel, Investment Adviser Association (July 28, 2026) ("IAA 2"); Catherine Bowman, Chair of the ADISA Legislative and Regulatory Committee, The Alternative & Direct Investments Securities Association (July 28, 2026) ("ADISA"); Average Civilian (August 6, 2026) ("Civilian"); Terry Carter, Founder, Carter Enterprise LLC (August 6, 2026) (addressing Regulatory Notice 26-14 and the Rule 2210 requirement for an appropriately qualified registered principal to approve each retail communication, which is not a subject implicated by the Proposal and therefore outside the scope of this response to comments).

9 See ADISA; IAA 2; ICI 2; SIFMA 2.

10 Music recommended "adopting UPIA use by the advisory side of the business which always requires portfolio theory directly derived from statistical analysis as a process." FINRA assumes that "UPIA" refers to the Uniform Prudent Investor Act," a model law that multiple states have adopted which provides rules to govern the actions of trustees with respect to investment of trust property. See Uniform Law Commission, Prudent Investor Act, available at https://www.uniformlaws.org/committees/community-home?CommunityKey=58f87d0a-3617-4635-a2af-9a4d02d119c9.

11 See Obelisk 2.

Other Presentations of Performance

As noted above, four commenters generally supported the Amended Proposal. Some of those commenters suggested that Rule 2210 be further amended to address other presentations of performance permissible under the Investment Advisers Act of 1940 ("Advisers Act") Marketing Rule ("Marketing Rule"), subject to the Marketing Rule's conditions.[12] FINRA recognizes commenters' desire to include additional performance standards beyond those for the presentation of projections of performance and targeted returns. The current proposal represents an incremental change and does not foreclose future potential amendments to adopt standards for other performance categories. Accordingly, FINRA declines to address additional performance standards given that they are beyond the scope of the Proposal.

Explanations vs. Projections

ADISA encouraged the adoption of a principles-based framework, focused on disclosure, that would recognize that not all forward-looking communications present the same level of investor-protection risk. ADISA suggested a distinction between a communication designed to explain how an investment operates under stated assumptions and a communication projecting future investment performance or targeted returns.[13] ADISA further recommended that FINRA distinguish educational modeling from performance projections and encouraged FINRA to acknowledge, and address in guidance, that certain educational modeling serves a different purpose than a projection of expected investment performance. ADISA also suggested that illustrations of anticipated distributions or cash flows that are derived objectively from supportable assumptions differ from projections of future capital appreciation or market performance and should be evaluated under a framework that recognizes their distinct purpose and characteristics.

FINRA does not believe it is appropriate at this time to adopt ADISA's recommended framework. FINRA believes that such categorization, definitional distinctions, and differing regulatory treatment is unnecessary and would introduce additional burdens and complexity to the Proposal and could make it more difficult for

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12 See 17 CFR 275.206(4)-1(d). See IAA 2; ICI 2; SIFMA 2; (suggesting general alignment but calling particular attention to related performance); see also ADISA.

13 See ADISA (suggesting a graduated framework and citing educational illustrations and distribution or cash-flow illustrations as examples of presentations warranting less regulatory consideration).

firms to understand and comply with its requirements. FINRA notes that not all predictions or projections are precluded under current Rule 2210.[14] For example, a member may present "[a] hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy."[15] Whether the illustrations referenced by ADISA would fall within this exception is a facts and circumstances analysis and need not be addressed in the Proposal.

Reasonableness of Assumptions Underlying Projections

ADISA also recommended that FINRA provide additional guidance regarding the reasonableness of assumptions underlying a projection of performance or targeted return under amended Rule 2210. FINRA believes that the long-established content standards in current Rule 2210 provide sufficient principles for members to assess the reasonableness of the criteria used and assumptions made in a projection of performance or targeted return.

As discussed in the Response Letter, 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.[16] 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.[17] In addition, 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.[18] Whether a projection of performance or targeted return is reasonable under Rule 2210's general

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14 See Rule 2210(d)(1)(F)(i)-(iii).

15 Rule 2210(d)(1)(F)(i); see also Regulatory Notice 20-21 (discussing permissible use of reasonable forecasts of issuer operating metrics that may convey important information regarding the issuer's plans and financial position); Rule 2210(d)(1)(F)(ii) (providing an exception from the general prohibition on predictions or projections of performance for an investment analysis tool that meets the requirements of Rule 2214).

16 See Rule 2210(d)(1)(A).

17 See id.

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

content standards will depend on the facts and circumstances of the presentation. FINRA does not believe it would be useful or appropriate at this time to assume various fact patterns and provide guidance based on those assumptions. While it is not prepared at this time to provide the requested relief, FINRA acknowledges the commenter's request for additional guidance. If the Commission approves the Proposal, FINRA will consider what additional guidance may be warranted.

Safe Harbors

ADISA further recommended that FINRA establish safe harbors for firms that utilize standardized methodologies and prescribed disclosures and suggested that FINRA's evaluation of the reasonableness of any assumptions avoid hindsight evaluation. In a related comment to the Initial Rule Filing, CAI urged FINRA to provide greater flexibility for registered index-linked annuity ("RILA") illustrations that would allow members to illustrate RILAs along the lines afforded to variable annuities pursuant to FINRA Rule 2211. ADISA also suggested that FINRA consider whether additional flexibility may be appropriate when communications are directed to institutional or sophisticated investors.

As discussed in the Response Letter, FINRA does not believe it is necessary at this time to provide any specific safe harbors for member communications that include presentations of performance or targeted returns. Whether a projection of performance or targeted return complies with amended Rule 2210 will depend on the facts and circumstances of the particular communication, including: the information displayed in the presentation, the intended audience, and the accompanying disclosures. This flexibility will allow members to tailor their communications accordingly. While it is not prepared at this time to provide the requested safe harbor and amendments, FINRA acknowledges the commenters' requests and, if the Commission approves the Proposal, FINRA will consider what additional guidance or amendments may be warranted.

FINRA notes that to comply with Rule 2210's content standards, members must consider the context and audience of the communication, including whether the communication is directed to institutional or sophisticated investors. In this regard, Rule 2210 provides that "[m]embers must ensure that statements are clear and not misleading *within the context in which they are made*, and that they provide balanced treatment of risks and potential benefits."[19] In addition, Rule 2210 specifies that "[m]embers must consider the nature of the audience to which the communication will be directed and must provide

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[19] Rule 2210(d)(1)(D) (emphasis added).

details and explanations appropriate to the audience.[20] FINRA believes that these general obligations further support the view that members have flexibility to tailor compliant communications—including those that contain projections of performance or targeted returns under the amended rule—to account for the nature and sophistication of the intended audience.[21]

Uniform Prudent Investor Act and Modern Portfolio Theory

Music recommended that projections in member communications be subject to the UPIA and modern portfolio theory. As discussed above, the UPIA is a model law and framework that establishes general standards for trustee conduct, including various fiduciary considerations. Because the UPIA applies specifically to situations in which a trustee is investing trust property, FINRA does not believe that the Proposal's context is appropriate for application of the model law. Moreover, FINRA does not interpret or enforce state laws, including those governing trustee obligations. FINRA therefore declines to impose trustee obligations under the UPIA on broker-dealers that include projections of performance or targeted returns in communications.

Music also commented that investors should be informed that the outcomes in a projection of performance or targeted return are based on statistical norms and that investors should be provided with three different outcomes based on different market conditions. FINRA acknowledges that such information may be valuable in some instances but does not believe that the rule should mandate that members provide projections of performance or targeted returns in a specific manner or that such presentations be based on specific, differing market conditions. It is FINRA's belief that the disclosure obligations in the Amended Proposal would provide sufficient information to investors while also providing members with flexibility to tailor their communications based on the intended audience of the communication.

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20 See Rule 2210(d)(1)(E).

21 See also Exhibit 5 to Partial Amendment No. 1 at Rule 2210(b)(4)(A)(iv)(a) (requiring that a member "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.") (emphasis added).

Reasonable Basis, Recordkeeping, and Disclosure Requirements

PIABA and Civilian opposed the Amended Proposal, asserting that it would expose investors to misleading and unbalanced sales presentations.[22] In particular, PIABA stated that removal of the Initial Rule Filing's express reasonable basis requirement was unwarranted because it did not impose any additional burden, as the Amended Proposal would still require that projections of performance and targeted returns be based on reasonable assumptions under the existing Rule 2210 content standards. PIABA also noted that other communications standards impose a reasonable basis requirement, such as for price targets contained in research reports and recommendations of securities made as part of a public appearance.[23]

PIABA also stated that the Initial Rule Filing's requirement that members maintain a record of the basis for the assumptions upon which projections are based provides an important investor protection safeguard that should not be eliminated. Additionally, PIABA and Civilian noted that the Amended Proposal's removal of the express requirements to disclose whether a projection of performance or targeted return in a member communication is net of anticipated fees and expenses and why such presentations might differ from actual performance deprives investors of material information and reduces investor protection.[24]

As discussed in the Response Letter, FINRA has not identified a set of facts where a projection or performance or targeted return lacking a reasonable basis could comply with Rule 2210's existing content standards. Accordingly, FINRA does not believe that investor protection is reduced under the Amended Proposal. Moreover, because the Amended Proposal's conditions for the use of projections of performance and targeted returns more closely follow the Marketing Rule's conditions for the use of hypothetical performance, adoption of these standards would reduce compliance uncertainty for firm personnel who act both as registered representatives and investment adviser representatives, as well as for

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22 See PIABA (suggesting also that a comparison to what is permitted of investment advisers under the Marketing Rule is not apt because investment advisers are subject to a fiduciary standard that imposes greater scrutiny); Civilian (suggesting that projected returns look like a promise and that investors deserve full warnings and clear explanations).

23 See Rules 2210(d)(1)(F)(iii) and 2210(f)(2).

24 See Civilian (suggesting that investors can be easily misled if disclosures do not explain fees, risks, and why the projection might not match reality).

firms that are either dually registered as investment advisers or distribute communications containing projections or targeted returns that are available to both member firm customers and investment adviser clients.

Although other provisions in FINRA rules expressly impose a reasonable basis requirement for certain communications (e.g., research-related communications), FINRA continues to believe that including this express requirement for communications containing a projection of performance or targeted return would be duplicative of the general content standards and is therefore unnecessary. Moreover, the existence of express reasonable basis language in other rules or other provisions of Rule 2210 does not alter Rule 2210's general content standards and remove the general principle of reasonableness that follows from those standards and that would apply to projections of performance and targeted returns in member communications.

In addition, the Amended Proposal would require members to maintain a record of information concerning the source of any projection of performance or targeted return.[25] As discussed in the Response Letter, FINRA believes this addition, together with the existing Rule 2210 requirement that member communications "provide a sound basis for evaluating the facts in regard to any particular security or type of security,"[26] will require members to substantiate the basis for such performance presentations in order to demonstrate compliance with the content standards. Indeed, FINRA does not believe that, in most cases, members would be able to demonstrate compliance under the Amended Proposal and the existing Rule 2210 content standards without records to support the basis for the criteria and assumptions made in calculating a projection of performance or targeted return.[27] FINRA therefore believes that the proposed recordkeeping requirement, in tandem with Rule 2210's existing content standards, provide robust investor protection.

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[25] See Exhibit 5 to Partial Amendment No. 1 at Rule 2210(b)(4)(A)(iv).

[26] See Rule 2210(d)(1)(A).

[27] FINRA's position is intended to align with the requirements of the Marketing Rule, which prohibits an investment adviser from "includ[ing] a material statement of fact [in an advertisement] that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission." 17 CFR 275.206(4)-1(a)(2); see also Investment Advisers Act Release No. 5653 (December 22, 2020), 86 FR 13024, 13042-43 (March 5, 2021) (adoption of Investment Advisers Act of 1940 Rule 206(4)-1 (Investment Adviser Marketing)) ("Marketing Rule Release") (stating that "we would view performance returns included in an advertisement to be material statements of fact that an adviser would need a reasonable basis for believing that it will be able to substantiate;"

With respect to the required disclosures in the Amended Proposal, nothing in the Amended Proposal would deprive investors of material information or reduce investor protection. Rule 2210's general content standards prohibit the omission of any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.[28] This requirement would apply to any communication containing a projection of performance or targeted return.

Whether a communication that presents a projection of performance or targeted return includes sufficient disclosure to meet the obligations of the proposed rule change and the general content standards will depend on the facts and circumstances of the presentation, including the intended audience receiving the communication. While FINRA would generally expect that, to meet the disclosure requirement regarding the criteria used and assumptions made, a communication would provide sufficient information for the investor to understand whether the projected performance or targeted return is net of anticipated fees and expenses, the contours of that disclosure would depend on the facts and circumstances, including for example, the sophistication of the intended audience.[29]

Similarly, to comply with the requirement to disclose the risks and limitations, FINRA would generally expect a communication that presents a projection of performance or targeted return to provide sufficient information to enable the investor to understand the reasons why the projected performance or targeted return may differ from actual performance.[30] However, those disclosures could be tailored to the intended audience. FINRA believes that the disclosure requirements in the Amended Proposal retain the essential elements of the Initial Rule Filing while also providing appropriate flexibility for

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stating also that "if an adviser is unable to substantiate the material claims of fact made in an advertisement when the Commission demands it, we will presume that the adviser did not have a reasonable basis for its belief").

28 See Rule 2210(d)(1)(A).

29 See also Marketing Rule Release, 86 FR at 13070 (stating that "if an adviser's presentation of gross performance does not reflect the deduction of transaction fees and expenses, an adviser should disclose that fact to avoid being misleading, if it would not be clear to the investor from the context of the advertisement").

30 Id. at 13085 (stating that "[r]isk information should also include any known reasons why the hypothetical performance might differ from actual performance of a portfolio").

members to tailor their communications based on the specific communication and its intended audience.

In addition, similar to the Marketing Rule's conditions for an investment adviser advertisement that contains hypothetical performance, members would be required 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 as well as the risks and limitations of using the projected performance or targeted return in making investment decisions. FINRA believes that Rule 2210's general content standards, together with the disclosure requirements that are specific to projections of performance and targeted returns, ensure that investors have sufficient information to consider the risks and limitations of relying on such performance presentations.

Exchange Act Requirements

Obelisk asserted that the Amended Proposal fails to provide the SEC with sufficient information for the SEC to issue an order of approval with respect to various sections of the Exchange Act, including Sections 3(f); 15A(b); 19(b)(2)(C); and 23(a)(2).[31] Obelisk suggested that the Amended Proposal would trigger compliance costs and legal uncertainty that would negatively impact capital formation.[32] Obelisk further identified issues under the Regulatory Flexibility Act, the Administrative Procedures Act, and the Paperwork

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31 See Obelisk 2.

32 See e.g., Obelisk 2 (suggesting various deficiencies, including: (1) with respect to removal of the express reasonable basis requirement, a statement that the relevant question is "whether the amendment's net effect reduces or relocates burden: the burden removed, minus the certainty lost, plus general-standard risk, plus documentation cost, plus defensive review, yields the net regulatory effect"; (2) with respect to removal of the express requirement to disclose the reasons a projection might differ from actual performance, a statement that removal "invites defensive over-disclosure and legal review, the cost of which is fixed and is passed through to, or withheld from, small offerings that use projections"; (3) with respect to removal of the net of fees and expenses disclosure, a statement that "[w]hether a projection is net of fees is a first-order determinant of comparability; FINRA did not analyze the effect of removing a bright-line, comparability-preserving disclosure on investors, or the corresponding uncertainty for firms determining what the general standard requires"; and (4) with respect to the recordkeeping requirement, a statement that "FINRA did not quantify the recordkeeping cost, distinguish fixed from variable components, segment by firm size or offering size, or assess its interaction with existing books-and-records obligations.").

Reduction Act, which do not apply directly to FINRA.[33] Obelisk also asserted what it deemed to be a less burdensome approach.[34]

FINRA believes that it has satisfied the statutory requirements and provided sufficient information for the SEC to approve the Amended Proposal. In addition, FINRA declines to adopt the alternative approach suggested by Obelisk. FINRA believes the approach in the Amended Proposal is sufficiently clear and flexible such that it can be operationalized by members, appropriately leverages existing standards in Rule 2210 that are well-known and familiar to members, and does not impose unreasonable costs in terms of compliance or operations, including in connection with small issuer offerings facilitated by broker-dealers. In addition, FINRA observes that nothing in the Amended Proposal compels broker-dealers (or issuers utilizing the broker-dealer channel) to include in their communications projections of performance or targeted returns. This would be an elective activity that, to the extent utilized, may help with capital formation – including for small issuers.[35]

FINRA takes this opportunity to further respond to certain comments to the Initial Rule Filing.

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33 5 U.S.C. §§ 601–612; 5 U.S.C. §§ 551–559; and 44 U.S.C. §§ 3501–3521. Obelisk also calls attention to judicial review standards governing an SEC approval order.

34 See Obelisk 2 (suggesting seven elements: "(1) retain the source-recordkeeping requirement; (2) add a reliance safe harbor for projections and targeted returns drawn from Commission-filed or qualified disclosure absent actual knowledge or reason to know of material falsity; (3) permit reasonable reliance on qualified third-party information absent red flags; (4) apply an objective materiality threshold; (5) provide a cure period for technical documentation defects; (6) supply a model procedure and reduced recordkeeping for small and low-volume firms; and (7) state a clear boundary between issuer-created and member-adopted content.").

35 See, e.g., IPA (stating that "[t]he Proposed Rule Change also would encourage capital formation, particularly by private issuers, and remove an incentive for issuers to distribute private offerings outside of the highly regulated broker-dealer channel"); Simpson Thacher (suggesting that the Proposal "promotes many important policy goals, such as: avoiding confusion among investors caused by different and inconsistent disclosures; facilitating capital formation by providing issuers with clear, coherent marketing rules across distribution channels; and promoting compliance").

Regulation Fair Disclosure

In a comment in response to the Initial Rule Filing, MFA noted that Regulation Fair Disclosure (17 CFR 243.100 et seq.) ("Reg FD") prevents broker-dealers from distributing material containing certain information related to public companies to a select group of investors. MFA urged FINRA to consult with the SEC to clarify the use of hypothetical performance for vehicles such as registered investment companies and business development companies in instances where the broker-dealer has determined that such performance is only appropriate for institutional audiences.[36] Given that Reg FD is a Commission rule under the Exchange Act, to the extent such clarification is needed, FINRA believes that any such requests should be directed to the Commission and its staff.

Investment Advisers Act Marketing Rule Disclosure Requirements

In a comment to the Initial Rule Filing, MMI requested that FINRA confirm that disclosures prepared in compliance with the Marketing Rule will be deemed sufficient for purposes of the proposed Rule 2210 disclosure requirements for member communications that include projections of performance or targeted returns. Despite similar phrasing between the proposed amendments to Rule 2210 and the Marketing Rule with respect to specified disclosures, the phrasing is not identical and investment advisers are subject to a different regulatory regime that may inform distinct regulatory treatment based on the facts and circumstances. FINRA therefore cannot categorically conclude at this time that disclosures required by the Marketing Rule and other Advisers Act rules would always satisfy the requirements of the proposed disclosure requirements for Rule 2210.

Targeted Returns

In a comment to the Initial Rule Filing, North Capital suggested that FINRA has conflated projections of performance and targeted returns, and North Capital suggested that Rule 2210 does not prohibit targeted returns.[37] FINRA has long taken the position that Rule 2210(d)(1)(F) prohibits communications that contain targeted returns.[38] As explained

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36 See MFA 1, page 4, footnote 8.

37 See North Capital 1 (suggesting also that a return objective is always relevant to an investor); Rule 2210(d)(1)(F).

38 See FINRA Rule 2210 Frequently Asked Questions, Question D.7, available at https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation ("This prohibition [under Rule 2210(d)(1)(F)] extends to retail communications that include target returns to investors").

in the Initial Rule Filing and Response Letter, 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.[39]

Capital Acquisition Brokers

In a comment to the Initial Rule Filing, Monument expressed concern that, if the Proposal is adopted, two different sets of standards would apply to FINRA members: one for capital acquisition brokers ("CABs") and one for non-CAB members. Monument noted that CAB Rule 221 (Communications with the Public) does not prohibit the use of projections (subject to rules prohibiting misleading communications).[40] Monument suggested that either CABs be subject to the same projections standards as non-CAB firms, or "more practically," that FINRA should allow non-CAB firms to market private securities to institutional investors using the same scope of projections that CABs are permitted to use.

As FINRA stated in the Response Letter, CABs are subject to an entirely separate rulebook that is specifically limited to firms that elect to operate as CABs subject to specified limitations on their activities.[41] The proposed changes to FINRA Rule 2210

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39 See Initial Rule Filing at footnote 29; Response Letter at 14; see also Marketing Rule Release, 86 FR at 13081 (recognizing that the difference between projections and targets is not always readily apparent to recipients of an advertisement and providing that both projections and targets are to be subject to the same hypothetical performance conditions in the Marketing Rule).

40 CAB Rule 221 does not expressly permit or prohibit the use of projections in CAB communications. Rather, the rule provides, among other things, that no CAB communication may: (1) include any false, exaggerated, unwarranted, promissory or misleading statement or claim; (2) 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, or (3) imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

41 See CAB Rule 016(c) (definition of capital acquisition broker). In general, CABs' activities are limited to acting as placement agents or finders for sales of unregistered securities to institutional investors, acting as intermediaries in connection with the change of control of privately held companies, and advising companies and private equity funds on capital raising and corporate restructuring. CABs' specified functions do not include broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling

contemplate that broker-dealers would be permitted to present projections in communications to a broader range of investors (subject to specified conditions) than those that interact with CABs, and thus FINRA does not believe that the CAB Rules' communications standards are appropriate for non-CAB firms.

Moreover, even if a CAB recommended a private placement transaction that a non-CAB firm also recommended to the same group of investors, it would be highly impractical to create a special exception from Rule 2210's communications standards regarding the use of projected performance in such limited and unlikely situations. FINRA believes that, if a firm desires to be subject to the communications rules that apply to CABs, the firm should elect to conduct business as a CAB in its membership agreement, including the limitations on activities to which CABs are subject.

Written Policies and Procedures

As discussed above, among other things, the Proposal would require a member that distributes a communication that projects the performance or provides a targeted return with respect to securities or an investment strategy 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."[42]

In a comment to the Initial Rule Filing, NASAA stated that the Proposal should "require that broker-dealer written policies and procedures are designed to ensure that retail investors receiving projections 'have the financial expertise and resources to understand the risks and limitations of such presentations.'"[43] NASAA offered a suggested change to this condition: the written policies and procedures must be reasonably designed to ensure "that the intended audience possess the financial expertise and resources to understand the risks and limitations of the communication."

The Initial Rule Filing already included in its discussion of this standard a statement that communications that contain projections or targeted returns should only be distributed where the member reasonably believes the investors for whom that communication is intended have the financial expertise and resources to understand the limitations of such

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customers' funds or securities, or engaging in proprietary trading or market-making. See Regulatory Notice 26-04 (February 23, 2026).

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

43 See NASAA (quoting the Initial Rule Filing Notice, 91 FR at 9310).

presentations.[44] FINRA has made its intent clear on how this condition would apply in practice to members that consider whether to distribute a communication containing a projection or targeted return to particular categories of investors.

Moreover, FINRA believes this approach is similar to the Commission's approach with respect to hypothetical performance (which includes projections of performance and targeted returns) in investment adviser advertisements under the Marketing Rule.[45] In the Marketing Rule Release, the Commission stated that "[w]e intend for advertisements including hypothetical 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."[46] FINRA similarly intends that communications that include projections of performance and targeted returns should only be distributed to investors who the member reasonably believes have access to the resources to independently analyze this information and have the financial expertise to understand the risks and limitations of these types of presentations (referred to herein collectively as "investors who have the resources and financial expertise").

The Commission stated that "reasonably designed policies and procedures need not address each recipient's particular circumstances; rather, the adviser must make a reasonable judgement about the likely investment objectives and financial situation of the advertisement's intended audience."[47] The Commission further stated that "the final rule will specify that the policies and procedures must be reasonably designed to ensure that hypothetical performance is relevant to the *likely* financial situation and investment objectives of the *intended* audience. We added the qualifier 'likely' to clarify that an adviser is not required to know the actual financial situation or investment objectives of each investor that receives hypothetical performance."[48]

The Commission noted that the "condition is designed to help ensure that an adviser provides advertisements containing hypothetical performance information only to those

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

45 See 17 CFR 275.206(4)-1(d)(6)(i).

46 Marketing Rule Release, 86 FR at 13078.

47 Id. at 13083.

48 Id. (italics in original).

investors with the resources and financial expertise," and that hypothetical performance "may not be relevant to the likely financial situation and investment objectives of and may be misleading for investors that do not have the resources and financial expertise."[49]

The Commission further elaborated that "analysis of hypothetical performance may require tools and/or other data to assess the impact of assumptions driving hypothetical performance, such as factor or other performance attribution, fee compounding, or the probability of various outcomes. Without being able to subject hypothetical performance to additional analysis, this information could tell an investor little about an investment adviser's process or other information relevant to a decision to hire the adviser. Instead, providing hypothetical performance to an investor that does not have access to the resources and financial expertise needed to assess the hypothetical performance and underlying information could mislead the investor to believe something about the adviser's experience or ability that is unwarranted."[50]

FINRA believes that its proposed condition concerning written policies and procedures would impose comparable obligations on member firms that intend to distribute communications that contain projections or targeted returns and would protect investors by limiting the distribution of such communications to investors who have the resources and financial expertise. 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 for communications directed to a mass audience or intended for general circulation, including to a general retail investor audience. Providing a communication that contains a projection of performance or targeted return to persons other than investors who have the resources and financial expertise could be misleading as such persons may not understand the risks and limitations of relying on such presentations.

Suitability

In a comment to the Initial Rule Filing, Monument suggested that, if a firm fulfills the requirements of Rule 2111 (Suitability) regarding customer-specific suitability obligations for institutional accounts, the firm should be deemed to have satisfied the "relevancy" requirements of this condition. Monument commented that Rule 2111(b)'s institutional customer-specific suitability obligations closely resemble the requirements concerning written policies and procedures reasonably designed to ensure that a communication containing a projection is relevant to the likely financial situation and

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49 Id.

50 Id.

investment objectives of the intended audience of the communication. In this regard, Rule 2111(b) specifies that a member or associated person fulfills the customer-specific suitability obligation for an institutional account[51] if the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving securities, and the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations.[52]

As discussed in the Response Letter, with respect to any overlap between the proposed condition requiring written policies and procedures concerning an investor's likely financial situation and Rule 2111(b), the scope of each standard differs. The policies and procedures standard would apply to any communication that contains a projection or targeted return, regardless of whether the communication is delivered in connection with a recommendation made to an institutional investor. In contrast, Rule 2111(b)'s provisions only apply if a member or associated person makes a recommendation to an institutional customer.

While Rule 2111 and Rule 2210 serve different purposes, there may be potential overlaps in terms of what policies and procedures firms may adopt to satisfy these rules' requirements. A firm would need to adopt compliance policies and procedures that recognize the different standards. If a firm's business model creates redundancies between the policies and procedures for Rule 2111(b) and for communications that present projections or targeted returns, the firm can consider these factors when drafting its policies and procedures. In this regard, members may choose to have the same written policies and procedures to address compliance with both institutional suitability obligations and the use of projections or targeted returns in communications, so long as such policies and procedures address the requirements of each rule.

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51 An "institutional account" is an account of specified institutional investors as defined in Rule 4512(c), such as banks, savings and loans, insurance companies, registered investment advisers, and other persons with total assets of at least $50 million.

52 Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent. See Rule 2111(b); see also Rule 2111.07.

Regulation Best Interest

In a comment to the Initial Rule Filing, NASAA suggested that, with respect to retail investors, FINRA should limit member communications that include projections of performance or targeted returns to instances in which there is a recommendation for which Regulation Best Interest ("Reg BI") would apply.[53] NASAA acknowledged that Reg BI would apply to the extent that there was a recommendation of a securities transaction or investment strategy involving securities but stated that projections can be offered with customers outside of recommendations.[54]

As FINRA stated in the Response Letter, Reg BI would apply to the extent a member makes a recommendation to a retail customer but "[e]ven in the absence of a specific recommendation . . . Rule 2210's content standards and the proposed performance standards would provide safeguards to ensure broker-dealer customers, particularly retail customers, receive appropriate information."[55] As stated in the Initial Rule Filing, the policies and procedures requirement in the amended rule is intended to help ensure that projections of performance and targeted returns are only made available to investors who have the resources and financial expertise to understand the risks and limitations of these types of presentations. 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. The requirements of the Amended Proposal thus limit the intended audience who could receive communications containing projections or targeted returns.

To the extent communications are tailored to individual recipients, a firm would still be required to ensure that a communication containing a projection or targeted return is relevant to the likely financial situation of the intended audience, and FINRA would expect the corresponding disclosures to be tailored accordingly. In addition, the disclosure obligations in the Amended Proposal require that members provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the projected performance or targeted return as well as the risks and limitations of using the projected performance or targeted return in making investment decisions.

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53 17 CFR 240.15l-1.

54 See NASAA (noting particular concern with respect to self-directed platforms and the potential for mass communications tailored to reach recipient).

55 See Response Letter at 10.

FINRA believes that the Proposal appropriately limits communications such that they must be relevant to the likely financial situation and investment objectives of the intended audience, which helps ensure that projections of performance or targeted returns are only made available to investors who have the resources and financial expertise to understand the risks and limitations of these types of presentations. FINRA believes that the investor protection requirements specific to the Proposal, including the policies and procedures requirements and the disclosure obligations, provide appropriate investor protection in the absence of a recommendation under Reg BI.

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FINRA believes that the foregoing responds to the material issues raised by the commenters responding to Partial Amendment No. 1. If you have any questions, please contact me at (240) 386-4534, email: joe.savage@finra.org.

Best regards,

Joseph P. Savage
Vice President and Associate General Counsel

Attachment A: Alphabetical List of Commenters to the Initial Rule Filing

1. Meredith J. Abrams, David W. Blass, & Joshua Kim, Simpson Thacher & Bartlett LLP ("Simpon 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)