Cetera®

Via Electronic Delivery: pubcom@finra.org

September 4, 2026

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street NW
Washington, DC 20006

Re: <u>FINRA Regulatory Notice 26-14: Communications with the Public</u>

Dear Ms. Mitchell:

Cetera Financial Group, Inc. ("Cetera") submits the following comments in connection with FINRA Regulatory Notice 26-14, which contains proposed amendments to FINRA Rule 2210 regarding written communications with the public. (For ease of reference, we will refer to the text of Notice 26-14 and the proposed changes to Rule 2210 collectively as the "Proposal".)

Cetera is the corporate parent of four FINRA member firms. Through our more than 11,000 representatives, we provide investment advice and securities brokerage services to more than 1 million customers, the large majority of whom are individuals or small businesses. We and our representatives communicate with customers and other members of the public tens of thousands of times each day through multiple channels, including both traditional public and social media.

We will provide comments regarding specific aspects of the Proposal below, but we believe that the overall approach that FINRA has taken to modernize Rule 2210 is the correct one. Many of the current provisions of Rule 2210 have not changed materially in more than 20 years, and it often fails to recognize the ways in which communication between member firms and the public have evolved over that time. The revisions that FINRA has proposed will bring Rule 2210 more firmly into the modern era.

At the outset, we commend FINRA for undertaking this rulemaking exercise. It is our understanding that it arises at least in part from comments submitted in response to FINRA Notice 25-07, which is a part of the FINRA Forward initiative. Notice 25-07 represented a very constructive exercise in soliciting the opinions of member firms and other interested parties regarding major portions of the FINRA rulebook. The proposed revisions to Rule 2210 are timely, realistic, and will create efficiencies for member firms supervising customer communications while maintaining or enhancing the current level of investor protection.

We offer the following general comments with respect to both the Proposal and FINRA rulemaking more broadly:

- FINRA rules should be harmonized with those of other regimes to the greatest extent possible. That principle is particularly important here because FINRA members often provide investment advice and wealth management services to the same retail customers under multiple legal frameworks. Most FINRA members are either dually-registered as broker-dealers and investment advisers or provide investment advisory services to customers through affiliated and unaffiliated investment advisers. The majority of representatives associated with FINRA member firms also provide investment advisory services to customers as Investment Advisor Representatives of FINRA members, their affiliates, or unaffiliated entities. There are differences in the legal standards applicable to services provided by broker-dealers and investment advisers, often for good reasons, but the fact is that the same financial professionals often provide multiple types of investment-related services to the same customers. FINRA rules applicable to communications with those customers should be as similar as possible to those of other regimes applicable to the same activities in order to make them more familiar and understandable to customers.

- The Proposal appropriately recognizes that FINRA members expend a large quantity of supervision and compliance resources on activities that have not produced commensurate benefits in the form of investor protection. For example, requiring approval of many types of communications by principals of the firm prior to use involves a significant investment of time, energy, and other resources. The benefits, as measured in incremental investor protection, are often ephemeral. Compliance and supervision resources are finite. FINRA member firms must have the ability to utilize those resources in ways that maximize customer protection while balancing against the cost and effort expended. The recent trend by both FINRA and the SEC toward creating principles-based regulations instead of more highly prescriptive regimes gives member firms the ability to tailor their supervision and compliance programs to focus on their unique clientele, service offerings, and representative populations. The Proposal appropriately recognizes this balance, and we support its' approach.

- Notice 26-14 includes a considerable amount of discussion about Artificial Intelligence ("AI"), both in how communications with the public are created and how they are supervised. Every regulatory agency in the United States is attempting to determine how AI will impact the industries they monitor and how it will impact the public. We submit that AI, both in the form of Large Language Models and Artificial General Intelligence is evolving so rapidly that attempts to manage it with highly prescriptive regulations will not succeed. Rule 2210 and all similar regulations should be technology- and creatorneutral. The same standards should apply to the obligations of FINRA member firms regardless of who creates a communication, how it is distributed, and how it is supervised. Humans must always maintain ultimate responsibility for actions of the firm and its representatives, but all forms of AI should be viewed as tools, not ends in and of themselves.

- Much of Rule 2210 is focused on drawing distinctions between the author of the communication, its content, and how it is delivered. These distinctions may have made sense at the time they were adopted, but the evolution of communication devices and platforms has completely changed the landscape. A simple principle should apply to all communications from member firms and representatives to the public: They must be fair and balanced and properly disclose conflicts of interest that may exist with respect to the sender and/or endorser. Beyond that, the creator of the content, the intended audience, and the method of delivery should be of secondary concern. The same standards should apply to correspondence, advertising, and both dynamic and static advertising and social media content.

With all of the above as background, we offer the following comments with respect to the Proposal:

1. **Replacing the Pre-Use Approval Requirement with a Risk-Based Supervisory Standard Will Produce Benefits for Both Member Firms and Customers**

   Rule 2210 currently requires a principal of the firm to review and approve retail communications prior to use with the public. The Proposal would replace the preapproval requirement with a system in which member firms could establish risk-based systems for review of communications after use. This is the correct approach, for several reasons:

   - The formulaic and overly prescriptive pre-approval process substitutes quantity over substance in supervision. Only a small percentage of communications present a material risk to the investing public. Allowing firms to focus compliance and supervision resources on what they deem higher-risk communications is necessary and advisable.

   - It is consistent with the modern trend of both the SEC and FINRA in adopting principles-based regimes instead of more highly prescriptive versions. It recognizes the fact that all FINRA member firms are different. They offer different products and services on different platforms to different investor populations. They have different representatives serving different constituents. In serving different audiences, firms produce and deliver different types of communications that present different risk profiles. FINRA has recognized the wisdom of the rules-based approach in recent amendments to Rule 3110, which establishes general supervisory principles for member firms.[1] As we have noted above, a risk-based framework is calculated to enhance investor protection by allowing members to devote supervisory resources to communications presenting the greatest potential for investor harm rather than requiring the same level of review for large volumes of routine, lower-risk content.

FINRA should make clear that, so long as member firms undertake a rigorous and good-faith process to analyze and the risks attendant to specific communications and manage them appropriately, they will not be subject to adverse action based on hindsight or second-guessing with respect to a particular piece of content. Firms should be encouraged to consider which categories of communications may still require review or approval prior to use, but having undertaken a reasonable process, their determinations should be presumed to be valid.

FINRA should also confirm that the use of AI and other technologies can be effective methods for supervision of communications as part of a risk-based supervisory system. Subject to the requirement that individuals retain responsibility for all actions of the firm, use of AI tools in review and supervision of communications should be neither favored nor disfavored. We believe that currently available AI applications are well-suited to the often-tedious task of reviewing large volumes of generic or low-risk communications. The approach set forth in the Proposal will provide needed efficiency without sacrificing investor protection.

2. Eliminating the Distinction Between Static and Interactive Social Media Content Will Produce Greater Consistency Without Diminishing Customer Protection

The Proposal would remove the distinction between static and interactive social media content and apply a uniform standard for use and review of all such material. The Proposal correctly notes that the line between static and interactive content has blurred as communication platforms have evolved, and that the distinction has often become difficult to apply in practice. A framework that focuses on the substance and risk of communication better balances the resources devoted to supervision and the need for customer protection.

The Proposal provides that the member firm must consider the qualifications and experience of the preparer of any content used that is publicly distributed, particularly with respect to anyone who has a financial interest in a transaction or service, such as endorsers. This is the correct way to address potential conflicts of interest that may arise from communications that include endorsements or investment recommendations.

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[1] See, for example, FINRA Rule 3110.18 regarding Remote Inspection of Branch Locations. Rule 3110.18 establishes a framework under which member firms can elect to conduct inspections of branch locations remotely under certain circumstances after performing a risk-based evaluation of the activities conducted in those locations.

3. A Technology-Neutral, Principles-Based Approach to Use of AI Will Yield the Best Overall Outcome

The Proposal adopts a technology-neutral approach to communications generated with the assistance of artificial intelligence. As we have noted above, all forms of AI are evolving rapidly, and attempts to apply rules based on the person or device that generates the content will become unworkable in short order. The lynchpin of supervisory rules such as Rule 2210 must be that the member firm remains responsible for the content of communications without regard to how or by whom it was created.

4. The Proposed Modifications to Filing Requirements Are Appropriate

The Proposal would change current rules regarding circumstances under which communications must be filed with FINRA, either before or after publication. We agree that new member firms should be required to pre-file materials for a period of one year, beginning on the date upon which a new member files its' first communication. This will give FINRA Member Supervision staff valuable insight into the activities of new member firms, with the ability to correct errors or misimpressions that inexperienced firms may have.

5. Aligning Rule 2210 with the Investment Advisers Act Marketing Rule is an Important Objective

The standards applicable to communications with the public by investment advisers are primarily contained in the SEC Marketing Rule.[2] The Marketing Rule is an anti-fraud provision, and contains a principles-based regime designed to prevent regulated entities from misleading investors through communications that are inaccurate or fail to provide information sufficient to render them not misleading. Rule 2210 is much more prescriptive and directed at supervision of sales-related activities of member firms, but the goals of the Marketing Rule and Rule 2210 should be the same: To establish standards that make all communications with the public accurate, fair, and balanced.

FINRA member firms, customers, and the public all benefit from knowing that the standards applicable to similar conduct and activities by the same individuals will be regulated under equivalent standards. The Proposal represents a significant step in the right direction, but it remains considerably more prescriptive than the Marketing Rule. We are cognizant of the differences between the Investment Advisers Act and FINRA rules, particularly the fact that the Marketing Rule utilizes a broad anti-fraud lens, while Rule 2210 is intended to be more focused on hands-on supervision. That being said, the investor protection goals of both regimes are the same. They should be more similar than the amended version of Rule 2210 will make them.

[2] 17 CFR § 275.206(4)-1

6. Rule 2210 Should Establish a Clear Definition of What Constitutes an Investment Recommendation

Rule 2210(d)(7) includes specific requirements applicable to communications that include investment recommendations. As the Proposal points out, these provisions are based primarily on standards in the SEC Advertising Rule, which has been repealed and effectively replaced by the Marketing Rule. The Proposal would establish appropriate guardrails for communications containing investment recommendations, making it much more consistent with the Marketing Rule. We endorse the proposed revisions.

We also suggest that Rule 2210(d)(7) should incorporate the provisions of SEC Regulation Best Interest[3] ("Reg. BI") and FINRA Rule 2111 with respect to what constitutes an investment recommendation. In order for a communication to be deemed a recommendation and therefore subject to a different standard of review under Rule 2210, the communication should require a level of specificity and a "call to action" directly to the customer or prospective customer that is equivalent to that set forth in Reg. BI and Rule 2111.

The vast majority of communications from FINRA members that are not directed to a specific customer contain neither the level of specificity nor the call to action that a reasonable investor would consider necessary to be deemed an investment recommendation. For example, a statement in an advertisement by a member firm which states that "Investors should add Mutual Fund X to their portfolio", should not generally be deemed a recommendation for purposes of Rule 2210(d)(7), because investors recognize it as marketing material and not something that they should act upon in the absence of more personalized direction from the firm or representative. In practice, the line between describing a specific security and recommending it can be difficult to apply consistently, particularly in mutual fund marketing materials, model portfolios, fund screener results, and digital communications. The Proposal should adopt the logic of Reg. BI and FINRA Rule 2111 in establishing a clear line between investment recommendations and material that is disseminated for more general educational or marketing purposes.

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[3] 17 CFR § 240.15l-1.

Thank you for giving us the opportunity to offer these comments. If we may offer any additional information, please let me know.

Sincerely,

Mark Quinn
Director of Regulatory Affairs
Cetera Financial Group