EVERSHEDS SUTHERLAND

Eversheds Sutherland (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036-7703

D: +1 212.389.5000
F: +1 212.389.5099

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Via FINRA Comment Portal

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 26-14, *Proposed Modernization of FINRA Rule 2210 – Communications with the Public*

Dear Ms. Mitchell:

We submit this letter on behalf of the Committee of Annuity Insurers (the "Committee"),[1] in response to FINRA Regulatory Notice 26-14, *Proposed Modernization of Rule 2210 – Communications with the Public* (the "Notice").[2] The Notice proposes to amend FINRA Rule 2210 to, among other things: (1) replace the current requirement of principal pre-use approval of certain retail communications with a risk-based supervisory standard; (2) provide flexibility with respect to the existing distinction between "static" and "interactive" content in the social media context; (3) extend a similar risk-based framework to communications generated using artificial intelligence ("AI"); and (4) streamline certain existing filing requirements.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Notice and commends FINRA for continuing its efforts to modernize Rule 2210 in light of evolving technology and communication practices. The Committee views this proposal as an important first step toward a more modernized communications framework and applauds FINRA for its willingness to examine its longstanding regulatory approach. The Committee also wishes to acknowledge FINRA's efforts in recent years to address delays in the advertising review process. Committee members have generally experienced more timely reviews as a result, and we encourage FINRA staff to continue building on that progress.

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[1]The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over four decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

[2]See FINRA Regulatory Notice 26-14, Proposed Modernization of Rule 2210 (Communications with the Public) (2026), available at https://www.finra.org/rules-guidance/notices/26-14.

While the Committee supports FINRA's objectives, it believes the proposal as currently drafted may benefit from a more comprehensive approach guided by the principles and concepts set forth below. The Committee's primary observations, discussed in more detail below, are that: (1) certain areas may benefit from additional guidance as firms implement the risk-based framework for AI and social media; (2) the move away from mandatory pre-use approval will provide limited practical relief; (3) this rulemaking presents an opportunity to address a long-standing and overly broad interpretation of Rule 2210 as applied to dually-registered firms' investment advisory communications; (4) firms would benefit from guidance on how to satisfy the Rule 2210(b)(4) recordkeeping requirements – including for AI-generated content – once communications move outside of a centralized, pre-use approval workflow; and (5) FINRA should clarify how the proposal affects the existing Rule 2210(b)(1)(C) safe harbor.

1. AI and Social Media Warrant a More Comprehensive Assessment

The Committee supports FINRA's decision to adopt a risk-based supervisory framework for retail communications, including those involving AI and social media. This approach appropriately allows firms to tailor their supervisory procedures to their business models and risk profiles. As firms implement this framework, certain areas may benefit from additional guidance to help firms understand the range of approaches that may be consistent with their obligations and FINRA's expectations. The Committee offers the following observations in that spirit. In particular, the Committee believes FINRA's work in this area would benefit from addressing the following points.

a. Distinguishing AI-Generated Content from AI-Assisted Review.

The Notice does not clearly distinguish between AI that generates communications and AI or other technology tools that assist firms in reviewing, sorting, flagging, or escalating communications. These are conceptually different activities that raise different considerations. Guidance that addresses them separately, with tailored expectations for each, may help firms design appropriate supervisory frameworks.

b. Use of AI and Other Tools for First-Level Review.

The Committee believes the proposal will allow firms to design more effective, modern supervisory and review processes using technology. Firms may find it helpful to understand that the risk-based framework contemplates the use of AI and other tools to perform first-level review functions – including screening communications, assigning risk levels, routing items for further review, escalating higher-risk content, and supporting post-use surveillance – as part of a reasonably designed supervisory system.

c. Principal Involvement in Technology-Assisted Review.

Firms may benefit from understanding how far AI tools or other non-principal reviewers may go in a review process before a registered principal must become involved. The Committee believes a risk-based framework should allow principals to focus their attention on communications or alerts that require supervisory judgment, rather than requiring principals to manually review every communication or every alert generated by a review tool.

d. Forms of Human Oversight.

The Committee understands "human oversight" of AI-assisted or other technology-assisted review processes to encompass many forms – including testing, validation, monitoring, quality assurance, exception review, escalation, and governance of the technology itself – and not necessarily to require a human to manually re-review every item the tool has already reviewed, provided the firm maintains a sound overall control framework. Guidance confirming this understanding would be helpful.

e. Risk-Based Alert Handling.

AI-based tools may reduce false positives relative to legacy systems, but may also surface a greater volume of potential issues. The Committee believes firms should be able to use risk-based triage, sampling, escalation, and quality assurance processes, among other reasonable measures, to manage alert volume, rather than being required to manually review every alert simply because the technology is capable of generating it.

f. Risk Factors in Supervisory Procedures.

The Committee agrees that the use of AI in generating content, the use of social media, references to affiliates, and the use of third-party content may all be relevant risk factors for a firm to consider in its supervisory procedures. The Committee understands these to be factors to be weighed as part of a risk-based approach, rather than categories that automatically require principal pre-use approval regardless of a firm’s own risk assessment.

g. Application of Communications Rules to Social Media.

The Committee believes that FINRA's existing regulatory framework does not translate easily to how firms and their associated persons communicate with the public today. Podcasts illustrate the issue. Unlike a traditional written or scripted communication, a podcast appearance is often conversational and extemporaneous, and the content a firm or associated person is responsible for supervising does not end when the recording stops. Listeners frequently post comments, questions, or reactions on the hosting platform or on related social media pages. FINRA's current interactive/static framework, and its existing social media guidance more generally, do not squarely address broader questions such as who (or whether the firm) is responsible for that content, how long the supervisory obligation lasts, or what a reasonable review process looks like for a format that is ongoing and largely driven by third parties.

As a general matter, the Committee supports moving away from rigid adherence to the “interactive/static” framework for categorizing a firm’s communications obligations; however, the Committee believes that more comprehensive guidance should be provided that also covers expectations regarding supervisory, recordkeeping, and related obligations.

2. The Proposed Move Away from Mandatory Pre-Use Approval Will Have Limited Practical Benefit for Product-Related Communications

The Committee appreciates FINRA’s efforts to move toward a risk-based supervisory approach, but notes that, for many Committee members, the practical benefit of eliminating mandatory principal pre-use approval will be limited in the context of communications relating to variable products and other registered insurance products. These communications will, in most cases, continue to be filed with FINRA’s Advertising Regulation Department, and firms will, as a practical matter, continue to have such communications reviewed by a principal in advance of use in order to satisfy their filing obligations and manage the risks associated with these products.

Beyond communications involving products, the demands on the amount of training, education, and oversight on materials that are not pre-approved by a principal could be so demanding that it may make the flexibility provided by the proposal not very useful. Taken together with the continued filing requirement for product-related communications, the proposed change may not meaningfully reduce the overall compliance burden for many firms. The Committee encourages FINRA to consider, in connection with this or a future initiative, a more risk-based approach to the filing requirements themselves. In this regard, FINRA should coordinate its efforts with the Securities and Exchange Commission given the Investment Company Act of 1940 requirements that, as a practical matter, require certain pieces to be filed with FINRA. In addition, FINRA should continue to monitor and coordinate its rulemaking efforts with the SEC's pending Registered Offering Reform proposal, which would generally extend the Rule 482 advertising framework to registered index-linked annuities (RILAs) and certain other registered annuities.[3]

3. FINRA Should Use This Rulemaking to Address the FSC Interpretive Letter as Part of its Rule 2210 Modernization

The Committee notes that the Notice does not address FINRA's interpretive letter issued to Dawn Bond, FSC Securities Corporation, in 1998 (the "FSC Letter").[4] As the Committee has previously advised FINRA, the FSC Letter takes an overly broad view of the phrase "promoting the member's securities business" under Rule 2210. As a result, communications relating solely to investment advisory activity – and already subject to Rule 206(4)-1 under the Investment Advisers Act of 1940 and/or the anti-fraud provisions of that Act – are nonetheless treated as subject to FINRA's communications rules merely because they reference securities or the name of a dually-registered firm. This rulemaking, which is intended to modernize Rule 2210 for current market and regulatory realities, presents a natural opportunity to revisit this issue and should include it as part of its scope. Absent corresponding changes to the FSC Letter framework, the benefits of the proposed shift away from mandatory pre-use approval will be incomplete for dually-registered firms.

The Committee again recommends that FINRA withdraw the FSC Letter and take any other steps necessary to make it clear that communications that are designed primarily to promote a dually-registered firm's *investment advisory services* are not subject to FINRA's communications rules. FINRA should address this issue as part of this rulemaking and not leave it to further interpretive clarification.

4. FINRA Should Provide Practical Guidance on Recordkeeping.

Retail communications must already be preserved under Securities Exchange Act Rule 17a-4, but Rule 2210(b)(4) requires firms to maintain additional information about those communications. Those requirements are relatively straightforward to satisfy in a centralized pre-use approval environment, but they may present significant operational challenges once communications are created, distributed, supervised, and retained through decentralized channels such as email, social media, and other digital communication platforms. Unless FINRA provides additional guidance on how firms may satisfy Rule 2210(b)(4) outside of a centralized pre-use approval workflow, firms may conclude that they need to preserve centralized workflows in order to capture the required information, which would limit the operational benefits the proposal is intended to provide.

a. Clarifying the Rule 2210(b)(4) Recordkeeping Requirements.

Rule 2210(b)(4) requires firms to maintain, among other things: (i) a copy of the communication and the dates of first and (if applicable) last use; (ii) the name of any registered principal who

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[3] *Registered Offering Reform*, 91 Fed. Reg. 31,022 (May 26, 2026).

[4] *S*ee Interpretive Letter to Dawn Bond, FSC Securities Corporation, July 30, 1998, available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/dawn-bond-fsc-securities-corporation.

approved the communication and the date of approval; and (iii) for a communication not approved prior to first use, the name of the person who prepared or distributed it.

Under the proposed risk-based framework, a retail communication that is not subject to pre-use approval could be distributed through email or other digital channels by multiple associated persons over time, using substantially identical content directed to different recipients. In that scenario, additional clarity would be helpful as to whether a firm should identify the "date of first use" based on the initial distribution of the underlying content or based on each individual distribution event. Similarly, for purposes of identifying who "prepared or distributed" such a communication, it would be useful for FINRA to clarify whether firms should identify the initial preparer, the initial distributor, each individual distributor, or some other person – particularly since the preparer of an email-based communication is often not readily identifiable from the communication itself, whereas the distributor typically is (i.e., the sender).

The Committee requests that FINRA clarify how firms are expected to apply the Rule 2210(b)(4) recordkeeping requirements in these decentralized, multi-distributor scenarios, and how firms are expected to compile a complete record of retail communications for a given period without routing those communications through a centralized recordkeeping process.

b. Recordkeeping for AI-Generated Communications.

The Committee requests that FINRA provide additional guidance regarding the recordkeeping expectations specifically applicable to AI-generated communications. Consider, for example, a firm that uses a generative AI tool to create and distribute retail communications, and that has implemented governance, testing, monitoring, and supervisory controls designed to ensure that AI-generated content complies with applicable content standards and firm policies. The firm's procedures may permit certain retail communications to be generated and distributed without pre-use approval, provided they are generated and distributed through platforms that enable supervision and retention of the resulting communications. In that context, the underlying content, approved sources, and core messaging may remain substantially the same even though the tool personalizes certain elements for individual recipients.

FINRA should clarify how firms should evaluate communications that are generated from substantially similar underlying content but include recipient-specific personalization – including whether such personalized outputs are treated as separate communications for recordkeeping and filing purposes. FINRA should also clarify whether firms may maintain records relating to AI governance, approved sources, testing, validation, training, monitoring, and supervisory controls at the level of the AI system or program, rather than separately for each individual communication the tool generates. Guidance on these points would help firms implement AI technologies in a manner consistent with, and that realizes the intended benefits of, the proposed risk-based supervisory framework.

5. FINRA Should Preserve the Rule 2210(b)(1)(C) Safe Harbor.

The Committee requests that FINRA clarify how the proposal would affect firms' ability to rely on the safe harbor in Rule 2210(b)(1)(C) for retail communications that have already been filed by another member firm. The Committee would not want the proposed changes to weaken, narrow, or create uncertainty regarding this safe harbor.

CONCLUSION

The Committee appreciates the opportunity to comment on the Notice and FINRA's continued efforts to modernize its rules in this area. The Committee would welcome the opportunity to serve as a resource to FINRA as it considers these comments and continues to develop its approach to Rule 2210 and related communications requirements, including as they relate to AI-assisted supervision and review.

Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: ______________________________
Clifford Kirsch

BY: ______________________________
Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS