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September 11, 2026

Via email:

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Jennifer Piorko Mitchell

Office of the Corporate Secretary

FINRA

1700 K Street, NW

Washington, DC 20006

RE: Request for Comment Regulatory Notice 26-14 on Rule 2210

Dear Ms. Mitchell:

The University of Pittsburgh Securities Arbitration Clinic (the "Clinic") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 26-14. The Clinic, a University of Pittsburgh curricular offering, provides legal representation to investors with limited resources, often advocating for people whose claims represent much of their life savings. The Clinic offers the following commentary on the proposed initiative.

COMMENT

Introduction

The Clinic understands the increasing need to modernize FINRA's process with communications with the public, especially as it pertains to the rapid growth of social media and artificial intelligence. While the Clinic understands FINRA's effort to modernize Rule 2210 and recognizes the benefits of risk-based communications supervision, the Clinic is concerned about the disappearance of safeguards for the sake of modernization. In light of the rapidly changing technological landscape, we believe that FINRA should adopt more communication safeguards to protect investors. We would suggest that FINRA should establish a regulatory floor identifying categories of communications presenting heightened risks to retail investors which would then remain subject to mandatory principal pre-use approval.

I. Mandatory Pre-Use Approval Process

a. Background: Technological Advance and the Harm of Financial Communications.

As technology is advancing, the ability to mass distribute communication has become far easier than in the past. It is understandable that member firms want a way to use these technological advancements to communicate with customers at higher volume. However, these advancements in technology do not reduce the dangers that inappropriate communication can cause. A report from the Federal Conduct Authority outlines how technological advancements in communication are a key driver of the increase of financial scams.[1] Because of this, we need to ensure any changes made to the retail communication regulations are done without increasing risk to consumers.

b. Removal of These Safety Requirements is Relaxing the Guardrails on Already Risky Communication.

As outlined in the request for comment, FINRA reported that over the course of 2024 and 2025, out of the 172,898 retail communication filings, 24% of communications filed prior to first use were non-compliant.[2] This is compared to 10% of communications filed after first use being non-compliant. This report provides a great reference point for the dangers associated with removing a required approval process. It shows that the risk associated with retail communication is already high and that reducing the approval requirements will significantly increase the risk of harmful communication.

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[1] Financial Conduct Authority, *Financial Promotions Data* 2024 (Feb. 7, 2025), https://www.fca.org.uk/data/financial-promotions-data-2024.
[2] FINRA Regulatory Notice 26-14, at 11 (July 9, 2026).

c. <u>The Proposed Changes Make It More Challenging to Know When Member Firms Have Violated the Regulations.</u>

Currently, customers can check whether a member firm's retail communication was reviewed internally or not. The proposed changes would require the customer to understand a member firm's internal policies and then conduct extensive research on what risk is associated with that type of communication and whether FINRA recommends member firms to manage that particular risk. Even then, the line of whether the appropriate risk mitigation procedure has been breached is extremely vague and flexible.

d. <u>Self-Regulation is Far Riskier and More Inefficient than Effective Regulation.</u>

With the proposed changes, member firms would now be responsible for enforcing their own retail communication review procedures. By enabling firms to decide the level of review or whether to review the communication at all the responsibility shifts from FINRA to the member firm. This greatly increases the likelihood of harmful communication being distributed.
This self-regulation may also create a significant increase in harmful retail communication. Instead of preventing this harm by regulating the approval of this communication prior to distribution, the workload will be shifted to litigating the harm that results. As discussed in an article by Richard A. Posner, it is far more efficient in terms of time and cost to have effective regulation, rather than relying on litigation. Here, this self-regulation is an extremely inefficient use of FINRA, legal entities, and even member firm resources.[3] It is far more efficient to prevent this litigation by regulating approval, than requiring the resources to be spent on litigation.

e. <u>Reducing Communication Regulation Will Reduce Consumer Trust in Member Firm Retail Communication.</u>

Consumers rely heavily on FINRA's regulation of member firm communication to ensure the communication is safe to act upon. Because FINRA currently regulates the approval process of retail communication, consumers can trust that the communication they receive has been through an appropriate review process and therefore that they are safe to act on this communication. The removal of this required review process will remove this quality assurance mechanism that consumers rely on to be able to trust communication. Without this required

[3] Richard A. Posner, Regulation (Agencies) versus Litigation (Courts): *An Analytical Framework, in* Regulation versus Litigation: Perspectives from Economics and Law 11, 11–26 (Daniel P. Kessler ed., 2010).

review, consumers will be required to conduct their own independent research, or to ignore communication completely.

II. Artificial Intelligence ("AI")

a. Current Use of AI by Firms

Currently, firms have been using AI for common efficiency actions such as drafting and editing documents, client outreach and communication, and internal support for staff and attorneys.[4] Using the standards set out in Rule 2210, firms have primarily shifted their focus of AI usage to drafting social media posts, retail communications, FAQs, website edits, and marketing ploys to draw in potential interest. To this point AI has been used as a drafting mechanism but not as the finalized version, instead firms have continued to emphasize the use of human staff to refine and edit these drafts, so they continue to align with Rule 2210.[5] As for client communications, firms have begun to use Chatbots and AI assistants to respond to general inquiries, investor questions, simple explanations, and for help with mass producing emails/letters to potential and current clients. Lastly, internal support for staff has helped firms greatly in researching policies, summarizing this research, and coming up with research strategies. Like the process of drafting and retail communications, staff support documents are heavily monitored by staff and go through a human review before finalization.[6]

b. Challenges with Adopting and Supervising AI

There are a variety of challenges that arise with adopting and supervising AI; the Clinic would like to address hallucinations and lack of accuracy, supervision under Rule 3110, and security risk from outside vendors.

AI has continued to expand and grow in every industry across the country. However, there is still a strong hinderance to the accuracy and reliability of AI and Chatbot responses. A major flaw that should be acknowledged is hallucinations and severe lack of accuracy, whether it is making up information that cannot be accessed from reputable sources or misleading

[4] FINRA Regulatory Notice 24-09, at *2* (2024). https://www.finra.org/rules-guidance/notices/26-14

[5] MCG Consulting, *FINRA Rule 2210 Overhaul: Plain-English Breakdown of Regulatory Notice 26-14* (2026). https://mcgcomply.com/2026/07/27/finra-rule-2210-overhaul-what-broker-dealers-must-know/?utm_source=copilot.com

[6] Id. at *3*.

statements.[7] These issues strongly impact the way that firms use AI and can create violations set forth in Rule 2210 which emphasizes "fair, balanced, not misleading".

Rule 3310 requires brokerage firms to establish, maintain, and enforce a comprehensive system to supervise the activities of all associated persons. Traditional supervisory systems were built around static workflows: draft, review, approve. AI introduces dynamic, real-time content generation, which requires new supervisory methodologies. Firms must document how they test AI tools, how they monitor outputs, and how they manage changes to prompts, models, or vendor systems. As for recordkeeping, chat logs, dynamic web content, and personalized messages must be captured and stored in a manner that examiners can review, which is operationally demanding at scale.[8]

Lastly, firms have begun to create their own active AI and Chatbots for internal use due to security risk factors that arise from the use of outdoor vendors such as Microsoft Copilot, ChatGPT, Claude, etc. The security risk that comes from inputting private and confidential information is hard to supervise for firms since they tend to not have access to the outside vendor's data logs. This has led to the creation of their own AI models which now creates another possible issue for FINRA to monitor and supervise. Similar to outside vendor AI models, internal models tend to face significant bias and change management risk.[9]

c. Current Supervision of AI

Firms currently supervise AI-generated communications by tightly controlling how these tools are used and ensuring that human oversight remains central. Supervisory programs typically restrict the prompts and templates employees may use, require frequent testing of AI outputs, and mandate principal review for any AI-generated retail communication particularly dynamic tools such as Chatbots. Many firms also rely on sampling and exception-based reviews that concentrate on higher risk topics, including complex products, options, crypto assets, and leveraged strategies. To further mitigate risk, firms increasingly limit AI pathways so that staff

[7] Id. at *4* (discussing hallucinations and accuracy failures in generative AI systems).
[8] FINRA Rule 3110(a)(1). https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110

[9] FINRA, 2024 Exam Priorities Report, at *12* (highlighting vendor-management and model-risk concerns). https://www.finra.org/rules-guidance/guidance/reports/2024-exam-priorities

may use the tools only for educational or preliminary drafting purposes. Employees are required to maintain detailed documentation of periodic AI testing, track changes to prompts and model behavior, and update supervisory procedures as the technology evolves. These measures help demonstrate that the firm's supervisory system is **reasonably designed** under FINRA Rule 2210 and related oversight obligations.[10] We believe that more oversight and supervision that firms employ over AI, the better protected retail investor will be from harmful communications.

d. FINRA's Potential Guidance

We urge FINRA to provide guidance on how the existing FINRA rules apply to new technology without innovation. FINRA should list supervisory expectations specific to firm use of AI such as methods for reasonable testing, how to manage the hallucinations, and how to distinguish between misleading statements and factual recommendations. Recordkeeping guidance would be valuable as well. Firms need clarity on how to capture and retain dynamic AI interactions in a manner consistent with Rule 4511 and SEC 17a-4. Finally, FINRA can support industry readiness by providing training materials, exam-priority transparency, and forums for sharing supervisory practices. Firms need to utilize AI responsibly, so handing out clear guidelines and expectations will help them do so without compromising investor protection.

III. Social Media

a. Background: Social Media as a Source of Investor Harm

Social media has become a leading area for investment fraud. In 2025, social media accounted for 28% of fraud reports with monetary loss, only trailing behind websites and apps. Reported dollar losses connected to social media schemes have grown roughly eightfold since 2020.[11] Elderly investors, one of the Clinic's main client pools, are specifically targeted for these social media schemes. In 2024, investment scams caused older adults to lose more money than any other type of fraud, and both the number of loss reports and the total dollar amount lost by

[10] FINRA Rule 2210(b)(1)(A) (principal approval requirement for retail communications). https://www.finra.org/rules-guidance/rulebooks/finra-rules/2210

[11] Federal Trade Commission, Reported Losses to Scams on Social Media Eight Times Higher Than in 2020 (Apr. 2026), https://search.ftc.gov/news-events/data-visualizations/data-spotlight/2026/04/reported-losses-scams-social-media-eight-times-higher-2020

older adults were highest for scams that began on social media. [12] Small and less experienced investors face a related but distinct risk. State securities regulators identified social media platforms and emotionally manipulative marketing tactics as leading threats to retail investors in 2025.[13] In that same year, state regulators opened dozens of new investigations into social media fraud schemes involving senior victims alone. [14] Investors who are new to the market or advanced in age are often the ones least equipped to evaluate what they see on a screen. They are also the ones who bear the largest share of the resulting losses. With this background, the Clinic offers the following responses to the Notice's social media questions.

b. FINRA Should Eliminate the Static Versus Interactive Distinction and Replace it with an Audience-vulnerability Factor.

The Clinic agrees that the current distinction between static and interactive social media content no longer reflects how these platforms operate, thus incorporating social media into the larger umbrella of retail communications. In the Clinic's view, the format of a social media post rarely determines whether an investor is harmed. Social media content like Instagram or Snapchat stories automatically disappear within 24 hours, while an in-feed post on X or Facebook will remain online, unless the user decides to remove it. These distinctions align with the static and interactive communication groups that FINRA is suggesting should be eliminated. Static refers to any communications that do not actively interact with a third party and remains fixed on a platform (i.e. an in-feed post on Facebook), while interactive communications engage with a third party in real time (i.e., a TikTok live stream).

The two most important questions regarding social media are 1) who the target audience is; and 2) whether the target audience can recognize a misleading claim. Research from the FINRA Investor Education Foundation shows that investors who rely on social media and "finfluencers"

[12] Federal Trade Commission, FTC Issues Annual Report to Congress on Agency's Actions to Protect Older Adults (Dec. 2025), https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-issues-annual-report-congress-agencys-actions-protect-older-adults

[13] North American Securities Administrators Association, NASAA Highlights Top Investor Threats for 2025 (Mar. 6, 2025), https://www.nasaa.org/75001/nasaa-highlights-top-investor-threats-for-2025/

[14] North American Securities Administrators Association, NASAA Releases 2025 Enforcement Report (Oct. 16, 2025), https://www.nasaa.org/77718/nasaa-releases-2025-enforcement-report/

hold smaller portfolios on average. These same investors answer fewer objective investment knowledge questions correctly even while rating their own knowledge as high, and they are more than twice as likely to lose money once targeted by fraud compared to investors who do not use these sources for their financial information.[15] A protective framework which focuses solely on format over substance will not protect them from this risk. FINRA should direct member firms to weigh the likely composition and vulnerability of a post's audience as an independent factor, regardless of whether the content is later classified as static or interactive.

c. FINRA Should Require Member Firms to Weigh Audience Vulnerability, Preparer Compensation, and Emotional Appeal in Addition to its Current Proposed Factors.

The Clinic recommends that FINRA supplement that list with factors tied directly to investor vulnerability, in addition to the risk factors proposed in the Notice.

First, FINRA should require member firms to consider whether a communication is likely to reach older investors or investors with little trading history, since these groups report disproportionate harm from social-media-initiated-contact.[16] *Second*, firms should consider whether the preparer of the content, including a paid "finfluencer," has disclosed compensation or affiliation. *Third*, firms should consider whether the content relies on urgency or emotional appeals. State regulators have flagged this tactic as a defining feature of the schemes causing the most investor harm in 2025.[17] None of these additions requires a firm to give up the flexibility the proposal is meant to provide. They simply direct that flexibility towards the invests who most need protection.

In particular, the Clinic views the role of "finfluencers" within a member firm's marketing strategy as high risk. Hypothetically a member firm could pay a finfluencer to promote an investment, the finfluencer's promotional video could reference favorable past recommendations,

[15] FINRA Investor Education Foundation, Finfluencer Followers and Social Media Scrollers: The Profile, Patterns and Pitfalls of Social-Media-Informed Retail Investors (Apr. 2026), https://finrafoundation.org/sites/finrafoundation/files/2026-03/FINRA_Foundation_Research_Brief_Social_Media_Finfluencers.pdf

[16] *Id.*

[17] North American Securities Administrators Association, NASAA Highlights Top Investor Threats for 2025 (Mar. 6, 2025), https://www.nasaa.org/75001/nasaa-highlights-top-investor-threats-for-2025/

and be drafted with AI assistance. That finfluencer content can then reach vulnerable investors, like the Clinic's clients, without any principal ever reviewing it under the proposed rule. Rule 2210(b)(1)(D)(ii) exempts a communication from principal pre-use approval only if it does not promote a member's product or service. A video a firm pays for to promote an investment does not fit that exemption, regardless of the platform. The identity of the person who wrote the script should not change this result. Factor two asks about the preparer's qualifications and compensation precisely because a paid endorsement changes the risk calculus. For that reason, the Clinic does not believe a paid finfluencer communication should ever qualify for the lowest tier of supervision.

Compensation combined with a specific investment recommendation, a reference to favorable past performance, and AI-assisted drafting brings together several risk indicators the proposal itself already flags as elevating risk. The combination should function as a bright-line trigger for mandatory principal pre-use approval, not a factor left entirely to a firm's discretion. Compensation should also be disclosed on the face of communication itself. Because this risk originates in the business relationship between the firm and the finfluencer, investor protection needs to operate at the point the firm decides to pay for and distribute the content, not afterward through an enforcement action or an arbitration claim.

d. FINRA Should Address the Recordkeeping Challenge Directly in its Final Rule

From the Clinic's perspective as an advocate in FINRA arbitrations, the hardest part of a social-media-related claim is rarely proving that a post was misleading. The hardest part is proving what the post said. Social media content is frequently edited and deleted. If a member firm treats a communication as exempt from principal review because it is deemed low risk, the underlying content and its performance data are often not preserved anywhere. By the time an elderly client or a new investor recognizes a loss and seeks help, the evidence needed to bring a claim may already be gone. The evidence, the social media post, may have been edited or deleted by the time the investor notices the loss. This evidence may be near impossible to get. The original post may have been altered or even deleted. To acquire the metadata from a social media account may be out of reach for many investors. The Clinic's clients, as elderly and small investors, are exactly who would be most helped by creating such a retention policy.

Member firms maintain evidence that these supervisory procedures have been implemented and carried out, should include retention of the underlying communications and related metadata. The metadata should include t1) he date of posting; 2) the intended audience; 3) any edits made after the communication was posted to social media; 4) and any compensation paid to finfluencers for the same retention period required for other retail communications.[18] The change would not add a pre-use approval burden. It would simply ensure that a record exists when an investor is harmed and needs to prove what happened.

The Clinic supports FINRA's efforts to modernize Rule 2210 for a communications environment that has changed substantially since the rule was adopted. A risk-based framework can serve investors well if it is geared toward the investors who are most often targeted and least able to protect themselves. The Clinic respectfully requests that FINRA incorporate the audience-vulnerability and recordkeeping recommendations above as it finalizes the proposal.

IV. Past Specific Recommendations

FINRA's proposal to delete the detailed provisions of Rule 2210(d)(7) and replace them with a single principles-based prohibition barring firms from referring to past specific recommendations unless the communication is "fair and balanced" fundamentally shifts the rule from an objective, disclosure-driven framework to a subjective standard that is harder to enforce and provides less certainty for investors.[19] The current rule requires firms to disclose 1) every recommendation made during the relevant period; 2) the time and price of each recommendation; 3) the current price of each security; 4) whether the firm or its affiliates hold positions in the securities; 5) whether the firm makes a market in the securities; 6) whether the firm received investment banking or other compensation from the issuer; 7) any material conflicts of interest; and 8) the methodology used to select highlighted recommendations.. They are also prohibit firms from cherry-picking favorable recommendations and require firms to include warnings that past performance does not guarantee future results. The new proposed changes eliminate all concrete protections and replace them with a broad and somewhat vague standard of fairness.[20]

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[18] FINRA, "Books and Records," https://www.finra.org/rules-guidance/key-topics/books-records
[19] FINRA Regulatory Notice 24-XX (Proposed Amendments to Rule 2210), describing the shift from prescriptive disclosures to a principles-based fairness standard.
[20] Id.

This new proposed standard would mean that firms are no longer required to provide full period disclosure, time and price information, current pricing, position disclosures, market making disclosures, compensation disclosures, conflict of interest disclosures, methodology explanations, anti-cherry-picking safeguards, or past performance warnings.

FINRA should continue to bolster Rule 2210(d)(7) instead of eliminating from it because it would be better for investors if member firms were held to a standard of compliance with enumerated disclosures, rather than a principles-based standard which requires subjective judgment and invites inconsistent interpretations from firms and regulators. It should also be noted that investors and firms benefit more from clear cut instructions and disclosures that provide them with complete context when evaluating performance and conflicts.[21] A generalized standard lead to ambiguity that cannot easily be solved in discussions negatively affecting clients. Lastly, a generalized standard opens the gates to the ability of firms to present past recommendations in ways that appear compliant but obscure conflicts, distort performance, and undermine investor understanding.[22] The Clinic's suggestion would be to follow a balanced approach that 1) prioritizes clarity of retail communications and what crosses the line to a "recommendation"; 2) maintains protections for broker-dealers when it comes to mass communications; and 3) standardizes expectations where the risk are similar in both standards.

Conclusion

The Clinic supports FINRA's efforts to modernize Rule 2210 for a communications environment that has changed substantially since the rule was originally adopted. A risk-based framework can serve investors well if adjusted to protect the most vulnerable investors. The Clinic respectfully requests that FINRA incorporate the above suggestions as it finalizes the proposal.

Thank you for this opportunity to comment on Regulatory Notice 26-14. It is important to our clinic at the University of Pittsburgh School of Law, as our clinic provides legal

[21] FINRA Rule 2210(d)(1) (requiring that all member communications be *fair and balanced* and prohibit omissions that would cause the material to be misleading, thereby reflecting FINRA's longstanding principle that investors benefit from clear, contextual disclosures when evaluating performance and conflicts). https://www.finra.org/rules-guidance/rulebooks/finra-rules/2210

[22] See FINRA Rule 2210(d)(1) (general standards), which already prohibits misleading communications but does not provide the granular protections currently embedded in (d)(7).

representation to investors with limited resources.

Respectfully Submitted,

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