Letter from the Investment Company Institute

September 11, 2026

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

Re: *Regulatory Notice 26-14; Communications with the Public*

Dear Ms. Mitchell:

The Investment Company Institute[1] is writing to provide our views on FINRA Regulatory Notice 26-14,[2] which requests comment on proposed amendments to FINRA's communications with the public rule (Rule 2210, or the "rule"). The proposed changes would replace existing principal pre-approval requirements for retail communications with risk-based standards and modify certain retail communication filing requirements, among other proposed changes.

We support FINRA's efforts to modernize its ruleset and provide more flexibility in the current, rapidly evolving technological and communications environment. As described below, however, we believe that the proposal would have limited impact on registered investment companies (or "funds"), and we encourage FINRA to expand the proposal to provide more meaningful relief to funds. We also encourage FINRA to continue aligning its ruleset with the SEC's rule governing investment adviser marketing ("SEC Marketing Rule")[3] and modernize Rule 2210 by permitting the use of QR codes and expanding certain social media guidance.

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[1] The Investment Company Institute (ICI) is the leading voice of the asset management industry serving individual investors. ICI represents mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $47.6 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional $11.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and separately managed accounts (SMAs) for individual investors. ICI associate members include service providers to funds, including financial communications firms, custodians and transfer agents, and CIT Trust companies. ICI has offices in Washington, DC, Brussels, and London.

[2] *Regulatory Notice 26-14: Communications with the Public*, FINRA (July 9, 2026) ("Regulatory Notice"), available at https://www.finra.org/sites/default/files/2026-07/Regulatory-Notice-26-14.pdf.

[3] Rule 206(4)-1 under the Investment Advisers Act of 1940.

Finally, we provide feedback on potential FINRA guidance around the use of artificial intelligence (AI).

ICI Broadly Supports FINRA's Goals and the Proposal.

We commend FINRA for its FINRA Forward Initiative, its efforts to seek and respond to industry feedback, and its work to modernize its ruleset, which FINRA should periodically do as a general practice. In the Regulatory Notice, FINRA proposes to modernize the Rule 2210 framework for retail communications by:

- Requiring members to establish written procedures appropriate to their business, size and structure to determine which categories of retail communications require principal pre-use approval, instead of requiring strict pre-use approval for all retail communications;

- Removing the long-standing distinction between static and interactive social media (including exempting all such communications from FINRA filing requirements), and instead subjecting social media content to the same proposed risk-based pre-approval framework as other types of retail communications;

- Modifying pre-use filing requirements for new members and filing requirements for retail communications concerning registered investment companies that include or incorporate self-published performance rankings or performance comparisons of the investment company with other investment companies; and

- Modifying the broker-dealer standard for communications containing recommendations.

We support FINRA's proposed transition from the current strict principal pre-approval requirement for retail communications to a risk-based framework. We believe that members are best positioned to consider the risk levels and determine an approach that appropriately balances risks and burdens. This has the potential to be particularly helpful in the context of AI-generated communications. Such communications may be generated live to customers, and the volume of such communications may be large. A risk-based approach to pre-approval could alleviate significant regulatory burdens.

In any final rule, however, we request that FINRA provide the following additional guidance:

- Examples of lower-risk retail communications that principals need not review prior to use to help members understand FINRA's expectations and appropriately construct their procedures;

- Confirmation that, under a risk-based framework, members could continue to subject all applicable retail communications to principal pre-use approval. In other words, FINRA should confirm that nothing would *require* departure from current principal pre-approval practices, and any firms that continue to do so would satisfy this requirement;

- Clarification that the factors listed in proposed Supplementary Material .01 are guidelines for consideration, not mandatory elements of a firm's risk-based approach or automatic triggers for principal pre-use approval; and

- Confirmation that the new provision would not narrow or otherwise affect members' ability to rely on existing Rule 2210(b)(1)(C).[4]

ICI also supports FINRA's elimination of the distinction between static and interactive social media communications. We agree that the historical line between these materials has blurred with modern technology. Our understanding of FINRA's proposed approach is that: (i) retail communications posted in an online electronic forum (*i.e.*, social media) would be subject to the same proposed risk-based principal pre-approval framework as other types of retail communications; and (ii) all static and interactive retail communications posted in an online electronic forum would be exempt from FINRA filing requirements pursuant to proposed Rule 2210(c)(7)(M). We understand that the filing exemption in proposed Rule 2210(c)(7)(M) would include retail communications posted in an online electronic forum that promote or recommend a specific registered investment company or family of registered investment companies. We support this proposed approach and request that FINRA clarify the interrelationship of these concepts if it adopts Rule 2210(c)(7)(M) as proposed.

ICI additionally supports FINRA's proposed changes to the filing requirements for retail communications concerning registered investment companies that include or incorporate self-published performance rankings or performance comparisons. We agree with eliminating the pre-use filing requirement for such communications and relying instead on the less stringent filing requirement in proposed Rule 2210(c)(2)(A).[5] This would alleviate unnecessary regulatory burdens on funds, while still adequately protecting investors and providing FINRA with an opportunity to review the materials.

FINRA Should Expand the Proposal to Apply Equally to Retail Fund Communications.

As discussed above, we support FINRA's proposed move toward a more flexible review and filing framework. We note, however, that certain existing elements of Rule 2210 and SEC rules

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[4] This provision permits a member to use a retail communication without separate principal pre-use approval where another member has filed the communication with FINRA and received a letter stating that it appears consistent with applicable standards, and the member using the communication has not materially altered it or used it in a manner inconsistent with the FINRA letter.

[5] Proposed Rule 2210(c)(2)(A) requires that applicable communications be filed within ten business days of first use or publication.

limit the utility of this proposal for registered investment companies. We recommend that FINRA reconsider its approach to fund retail communications to allow funds to realize the potential benefits of this proposal.

First, the proposal would not meaningfully change principal pre-approval requirements for retail communications that promote or recommend a specific registered investment company or family of registered investment companies (*i.e.*, communications required to be filed with FINRA pursuant to proposed Rule 2210(c)(2)(A)). This is because FINRA would continue to require principal pre-approval of communications filed with FINRA.[6] Because retail communications that promote or recommend a specific registered investment company or family of registered investment companies still would require filing with FINRA, the existing rule's strict principal pre-approval requirement would largely remain for funds.

To more meaningfully reduce fund burdens, FINRA should pare back its overly broad filing requirements for retail fund communications, including by carving out certain lower-risk communications from these filing requirements. A communication's classification as "lower risk" could be based on the type or content of the communication.[7] FINRA could also consider a targeted sampling approach. Requiring firms to file representative materials would continue to provide regulators with meaningful visibility into industry practices while reducing unnecessary administrative burdens.

Second, the proposal would not meaningfully change pre-approval or filing requirements for registered investment company social media retail communications that qualify as Rule 482 advertisements under the Securities Act. As discussed above, we understand that the proposal would: (i) exempt all retail communications posted in an online electronic forum from filing requirements under Rule 2210; and (ii) permit a FINRA member to establish a principles-based standard for principal review of such communications. Funds, however, must file with the SEC materials that qualify as Rule 482 advertisements.[8] Entities can satisfy this SEC obligation by

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[6] Proposed Rule 2210(c)(4) states, "Notwithstanding any other provision of [Rule 2210], an appropriately qualified principal must approve a communication prior to a member filing the communication with the [FINRA Advertising Regulation Department]."

[7] Lower-risk communications could include, for example, communications that include macroeconomic and market commentaries, such as periodic reports that reflect industry-level flows and trends, paired with a marketing call to action with respect to certain funds that investors may consider purchasing. Given the inclusion of the macroeconomic commentary, we believe these communications are relatively low risk. Or, retail communications for funds could be exempt from filing if they do not include any performance beyond the offered fund's performance presented consistent with Rule 482(d)(1)-(4) under the Securities Act of 1933 ("Securities Act").

[8] *See also Filing Requirements for Certain Electronic Communications*, SEC Division of Investment Management Guidance Update No. 2013-01 (Mar. 2013), available at https://www.sec.gov/divisions/investment/guidance/im-guidance-update-filing-requirements-for-certain-electronic-communications.pdf.

instead filing with FINRA.[9] As discussed above, to the extent the communications are filed with FINRA, they are subject to principal pre-approval under proposed Rule 2210(c)(4).

The Regulatory Notice does not discuss these SEC filing requirements for funds. If the social media-related changes are adopted as proposed, absent relief under SEC rules, funds will still be subject to applicable SEC filing requirements. Theoretically, funds could file applicable materials with the SEC on Edgar or with FINRA on a voluntary basis to satisfy the SEC's filing requirement. We expect that funds would generally elect to continue filing with FINRA, requiring continued principal pre-approval and leaving funds unable to benefit from the relaxation of filing and pre-approval requirements contemplated in the Regulatory Notice.

We urge FINRA to engage with the SEC staff on appropriate Securities Act relief so that FINRA's intent with respect to social media communications can be realized for retail communications broadly. If SEC relief is not possible, FINRA should reconsider the requirement that all materials filed with FINRA must be pre-approved by a registered principal. FINRA could, for example, take a risk-based approach and permit members to file certain lower-risk retail communications with FINRA without subjecting them to registered principal pre-approval. If FINRA took this approach, these materials would still be subject to a filing requirement, but funds would have some flexibility with respect to principal pre-approval.

FINRA Should Continue to Align its Standards with the SEC Marketing Rule.

FINRA requests comment on aspects of the FINRA communications rules that should be more closely aligned with the standards applicable to investment advisers. As we stated in our June 2025 Letter, ICI has long supported harmonization of the FINRA and SEC marketing standards.[10] Having differing regulatory frameworks applicable to funds and advisers creates a compliance challenge for our members. Even slight differences in applicable standards are difficult to operationalize and potentially confusing to investors. While ICI appreciates FINRA's efforts to modernize Rule 2210 through this Regulatory Notice, ICI members have noted that continuing inconsistencies between the FINRA and SEC standards, particularly with respect to the inclusion of performance information, remain a larger pain point than the aspects of Rule 2210 addressed in the Regulatory Notice. We strongly encourage FINRA to continue its work to align these standards.

Specifically, we reiterate our request that FINRA align its performance reporting standards with those of the SEC Marketing Rule. Subject to appropriate investor protections, the SEC permits investment advisers to show related performance, extracted performance, hypothetical

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[9] Rule 497(i) under the Securities Act.

[10] Letter from Erica Evans, Assistant General Counsel, ICI to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, *FINRA Regulatory Notice 25-04* (June 10, 2025) ("June 2025 Letter"), available at https://www.ici.org/system/files/2025-06/25-cl-finra-rule-modernization.pdf.

performance, and predecessor performance, including to certain retail customers.[11] In permitting these types of performance information, the SEC explained that "related performance can be a valuable tool to assist an investor in evaluating a particular investment adviser or investment strategy, and that its use is consistent with industry practice."[12] With respect to hypothetical performance, the SEC acknowledged certain risks but ultimately stated that it "understand[s] that . . . hypothetical performance may be useful to prospective investors who have the resources and financial expertise" and that "the information may allow an investor to evaluate an adviser's investment process over a wide range of periods and market environments or form reasonable expectations about how the investment process might perform under different conditions."[13]

We have supported FINRA's proposed alignment of the standards for performance projections and targets,[14] and we encourage FINRA to continue this alignment. FINRA already has laid groundwork for further harmonization through various letters, which permit the inclusion of related performance and hypothetical back-tested performance in certain institutional (but not

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[11] The SEC Marketing Rule includes the following definitions of these terms:

- "Extracted Performance means the performance results of a subset of investments extracted from a portfolio." Rule 206(4)-1(e)(6);
- "Hypothetical Performance means performance results that were not actually achieved by any portfolio of the investment adviser," which includes performance derived from model portfolios, performance that is back tested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods, and targeted or projected performance returns. Rule 206(4)-1(e)(8);
- "Predecessor Performance means investment performance achieved by a group of investments consisting of an account or a private fund that was not advised at all times during the period shown by the investment adviser advertising the performance." Rule 206(4)-1(e)(12); and
- "Related Performance means the performance results of one or more related portfolios," which in turn is defined to mean "a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement." Rule 206(4)-1(e)(14)-(15).

[12] *Investment Adviser Marketing*, Investment Advisers Act Release No. 5653, 86 Fed. Reg. 13024, 13074 (Mar. 5, 2021).

[13] *Id.* at 13078. The SEC also specifically declined to impose separate requirements for performance advertising in retail and non-retail advertisements.

[14] *Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 2210 (Communications with the Public)*, 91 Fed. Reg. 9308 (Feb. 25, 2026); *Notice of Partial Amendment No. 1 to Proposed Rule Change To Amend FINRA Rule 2210 (Communications with the Public)*, 91 Fed. Reg. 41723 (July 7, 2026). *See* Letter from Matthew Thornton, Deputy General Counsel, and Erica Evans, Assistant General Counsel, ICI to Sherry R. Haywood, Assistant Secretary, SEC, *Notice of Partial Amendment No. 1 to Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public) (File Number SR-FINRA-2026-004)* (July 28, 2026), available at https://www.ici.org/sites/default/files/2026-07/26-cl-amendments-to-rule-2210.pdf.

retail) communications, subject to certain conditions.[15] We believe that the case for broader permitted use of related performance information (including for retail investors) is especially strong, given that the adviser has achieved the stated performance for other similar accounts and funds that it manages. These forms of performance information, when presented with appropriate disclosures and subject to safeguards, are potentially informative and helpful to retail investors making investment decisions.

FINRA Should Modernize its Guidance in Other Ways.

We also encourage FINRA to look for additional ways to modernize its ruleset in light of modern technology. For example, QR codes are a commonly used method of providing access to electronic information. They have become ubiquitous, for everything from sending money to another person through a payment app to viewing an online menu at a restaurant. They are also commonly used in advertising, both on television and online. Smartphones with the capability of reading a QR code are also ubiquitous. Pew Research Center reported in November 2025 that about 91% of U.S. adults own a smartphone, including a substantial majority of U.S. adults in all age groups.[16]

FINRA currently permits certain required disclosures to appear separately from an advertisement if the reader can access the disclosures through a clear, prominent hyperlink (*i.e.,* that required disclosures be "one click away"). We understand that FINRA has, in the past, declined to permit the use of a QR code to satisfy this "one click away" requirement. We strongly encourage FINRA to permit the use of QR codes in this context. This would be helpful, for example, as part of a television advertisement or a printed handout.

We also reiterate the recommendation in our June 2025 Letter to modernize guidance about educational materials posted on social media.[17] In particular, we request that FINRA expand the guidance in Regulatory Notice 17-18 to remove more financial literacy/general educational content from the scope of Rule 2210.[18] Topics covered by such materials could include

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[15] *See, e.g., Interpretive Letter to Edward P. Macdonald, Hartford Funds Distributors, LLC*, FINRA (May 12, 2015), available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-edward-p-macdonald-hartford-funds-distributors-llc; and *Interpretive Letter to Bradley J. Swenson, ALPS Distributors, Inc.*, FINRA (Apr. 22, 2013), available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/bradley-j-swenson-alps-distributors-inc.

[16] Mobile Fact Sheet, Pew Research Center (Nov. 20, 2025), available at https://www.pewresearch.org/internet/fact-sheet/mobile/.

[17] June 2025 Letter at 4.

[18] *FINRA Regulatory Notice 17-18: Guidance on Social Networking Websites and Business Communications*, FINRA (Apr. 25, 2017), available at https://www.finra.org/rules-guidance/notices/17-18. The guidance states that, if an associated person of a firm in a personal communication shares or links to content that the firm makes available in its communications that does not concern the firm's products or services, the associated person's communication would not be subject to Rule 2210. The guidance provides examples of such content, including

financial wellbeing, saving for retirement, or explanations of investing principles, such as asset allocation and diversification. We continue to believe that these types of materials, like other examples already included in the FINRA guidance, do not raise investor-protection concerns.

FINRA Should Consider Providing Additional Guidance Regarding AI.

FINRA also asks in the Regulatory Notice how firms are "using AI to generate, supervise, review or approve communications with the public," and how FINRA can "facilitate the efficiencies of AI tools in generating and supervising communications with the public while maintaining appropriate investor protections." In our June 2025 Letter, we encouraged FINRA to engage with industry participants on the use of AI, and we noted that ICI members continue to explore ways to enhance their AI processes.[19] We commend FINRA for taking this step and seeking feedback on the use of AI.

ICI members continue to explore uses of AI in the advertising space. ICI surveyed members in early 2025, and at that time, a minority of survey respondents reported using AI to review firm communications and marketing materials, with use cases focused primarily on pre-review, issue spotting, scanning for potentially misleading statements, proposing comments to submitters, and serving as an additional compliance or brand-risk review layer. Overall, member discussions have reflected that AI is being used as a supervisory aid rather than a replacement for legal, compliance, or registered principal review.

As we stated in our June 2025 Letter, technology continues to evolve rapidly, and members continue to explore uses cases for AI. As adoption of AI tools continues to expand across the industry, additional clarity around regulatory expectations would be helpful and, in particular, guidance regarding oversight, documentation, validation, accountability, and the use of AI-generated or AI-assisted content would be helpful. It would also be helpful for FINRA to indicate whether AI-generated content will be a focus of FINRA exams. In any guidance, FINRA should recognize that human oversight does not require manual review of every AI-created or AI-reviewed item. Depending on the tool and use case, oversight may include testing, validation, monitoring, sampling, exception review, escalation, and quality assurance.

As technology continues to develop, FINRA should seek to ensure that its guidance is workable and technology neutral. For example, some ICI members have indicated that they use (or plan to use) AI to generate content in chatbots. We request that FINRA provide additional technology-neutral guidance that could, for example, apply to text that the AI tools generate in chatbots and that customers submit to chatbots. In particular, FINRA should clarify that every instance of such text does not have to be filed with FINRA, retained, or supervised for complaints if, for example, there is clear disclosure that the customer is not chatting with a

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information about the firm's sponsorship of a charitable event, a human-interest article, an employment opportunity, or employer information covered by state and federal fair employment laws.

[19] June 2025 Letter at 5.

human. FINRA should clarify that this is the case even if the AI-generated content uses slightly different words in its responses to different customers, as customer-facing generative AI tools may generate unique responses to inquiries in real time. In such situations, pre-use review of each individual response is not practical, and firms should not be required to screen every customer prompt or AI-generated response as ordinary correspondence.

Rather than requiring strict filing, retention, and supervision of such AI-generated communications, FINRA should recognize that supervision may instead occur at the system level through controls over the tool, testing, monitoring, sampling, escalation, and exception review, and should focus on ensuring that member firms using these types of tools have appropriate risk-based frameworks around the use of the tools. These frameworks could provide for, for example, appropriate methodologies and controls when communications are generated and appropriate testing.

More broadly, FINRA's guidance should remain technology neutral. AI is a current focus, but the communications and supervision framework should be flexible enough to apply to future tools as well. We encourage FINRA to apply existing communications and supervisory principles in a way that allows firms to use new technology subject to appropriate risk-based controls.

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We appreciate the opportunity to comment on the Regulatory Notice. If you have any questions, please contact me at erica.evans@ici.org.

Sincerely,

/s/ Erica Evans
Erica Evans
Assistant General Counsel

cc: Phil Shaikun, Vice President and Associate General Counsel
Ilana Herscovitz Reid, Associate General Counsel
Ira Gluck, Vice President, Advertising Regulation