September 10, 2026

Submitted via email to: pubcom@finra.org

Jennifer Piorko Mitchell
Senior Vice President, Corporate Governance and Deputy Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1506

Re: Proposed Changes to Modernize Rule 2210 (Communications with the Public)

Dear Ms. Mitchell,

On behalf of the National Society of Compliance Professionals ("NSCP") and its 2,000+ members, we thank you for the opportunity to provide comments on FINRA's proposal to modernize Rule 2210 (Communications with the Public).

Since 1987, NSCP has been the leading non-profit membership organization dedicated to supporting compliance professionals in the financial services industry, focusing primarily on investment advisers, broker-dealers, and private funds. Our members play a central role in advising on, designing, and administering policies and procedures that are reasonably developed to ensure compliance with a wide range of laws and rules enacted by federal and state regulators and self-regulatory organizations.

NSCP commends FINRA for its efforts to modernize Rule 2210 to reflect the significant changes in how financial services firms communicate with the public. In particular, we strongly endorse the proposal's transition from a requirement to review and approve every retail communication toward a risk-based approach, under which firms may determine the risk appetite governing their own supervisory framework based on various factors.

From the perspective of compliance professionals, we believe this represents a meaningful and appropriate modernization of Rule 2210. At the same time, a risk-based approach places greater responsibility on compliance professionals to exercise judgment in designing, implementing, documenting, and overseeing effective supervisory systems. We therefore encourage FINRA to preserve meaningful flexibility for firms and their compliance professionals while providing sufficient clarity regarding the principles that should guide those systems and how they will be evaluated. NSCP further urges FINRA to ensure that compliance professionals who advise their firms to design and implement reasonable supervisory systems in good faith are not subjected to unfair personal liability or second-guessing during examinations.

Our comments focus primarily on the proposed transition to risk-based supervision, with additional comments regarding harmonization with the SEC's Marketing Rule, proportionality for smaller firms, and implementation and examination considerations.

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Support for a Risk-Based Approach to Communications Supervision

NSCP strongly supports FINRA's proposal to replace the current prescriptive requirement for advance principal approval of retail communications with a risk-based supervisory framework.

The volume, speed, and variety of communications used by financial services firms have changed considerably since the existing framework was developed in 2013. Firms today communicate through websites, email, social media, digital advertising, webinars, podcasts, and other electronic channels. The increasing use of technology, including artificial intelligence (AI), has further accelerated the volume and speed at which communications may be created and distributed.

In this environment, requiring the same form of pre-use review for every retail communication does not represent the most effective allocation of a firm's compliance resources. A risk-based framework can allow firms and their compliance professionals to devote greater attention to communications that present material regulatory or investor-protection risks while applying more streamlined supervisory procedures to communications presenting lower risks.

NSCP believes this approach is consistent with the fundamental objective of an effective compliance program: resources should be allocated in a manner reasonably designed to identify and mitigate the risks that matter most.

We therefore support FINRA's proposed transition to a framework that permits firms to determine, based on their particular circumstances, which communications require heightened review and which may appropriately be subject to less intensive or post-use review.

The Compliance Professional's Role in a Risk-Based Framework

The proposed change has particular significance for compliance professionals.

Under a prescriptive pre-use approval framework, a compliance professional may focus primarily on whether a particular communication received the required approval. Under the proposed framework, the compliance professional may instead have greater responsibility for designing and overseeing the system through which those decisions are made.

This is an important distinction.

A risk-based framework will require compliance professionals to exercise judgment regarding matters such as:

- which categories of communications warrant pre-use approval;
- which communications may appropriately be subject to post-use review or surveillance;
- what characteristics or circumstances should result in heightened review;
- how frequently different categories of communications should be reviewed;
- how supervisory procedures should address new communication channels and technologies; and
- how the firm documents the rationale underlying its supervisory approach.

NSCP believes this shift toward professional judgment is appropriate and can result in more effective supervision. However, it is important that FINRA not inadvertently replace one prescriptive requirement with another by establishing an overly detailed methodology for how firms must implement risk-based supervision. FINRA should also recognize that this expanded reliance on professional judgment must be accompanied by corresponding protections for compliance professionals who exercise that judgment reasonably and in good faith. In particular, FINRA should acknowledge the distinction between the advisory role of compliance professionals and the supervisory responsibilities of the firm and its designated supervisory personnel. Compliance professionals who design and recommend supervisory frameworks should not be held personally accountable for supervisory failures attributable to the firm's resource allocation decisions, management priorities, or the conduct of supervisory personnel.

Firms should be permitted to develop supervisory systems that are reasonably designed based on their own circumstances. The appropriate framework for a large, diversified broker-dealer with a high volume of retail communications may differ substantially from the framework appropriate for a smaller or more specialized firm.

We therefore encourage FINRA to make clear that the proposed rule is intended to establish a risk-based supervisory standard, rather than a prescribed supervisory methodology.

This approach would be consistent with how FINRA has structured other risk-based supervisory programs. For example, in the Remote Inspections Pilot Program, Rule 3110.18(b)(2) sets out a non-exhaustive list of factors that participating firms must consider and document, while leaving to each firm how to weigh those factors and what supervisory response is warranted in its particular circumstance. Under the proposed amendments to Rule 2210, FINRA should similarly identify relevant risk factors without prescribing a mandatory methodology, and FINRA should confirm that proposed Supplementary Material .01 identifies considerations that a firm may take into account in designing its risk-based review framework, rather than elements that must be individually documented or addressed in every instance.

Proportionality and Smaller Firms

NSCP believes the proposed framework could be particularly beneficial to smaller firms.

Smaller firms may have significantly fewer compliance and supervisory resources than larger firms while nevertheless being required to maintain effective communications supervision. A risk-based framework could allow these firms to focus their resources on communications, presenting greater risks rather than applying the same level of review to every communication. As of FINRA's 2026 Industry Snapshot, small firms account for nearly 89% of FINRA-registered firms, meaning such a framework would directly impact the largest percentage of FINRA members.

At the same time, smaller firms may face greater challenges in developing sophisticated risk-assessment processes or acquiring specialized compliance technology.

We therefore encourage FINRA to ensure that the final rule is scalable and does not implicitly require firms to adopt costly technology, complex quantitative risk models, or elaborate supervisory infrastructures simply to demonstrate compliance. Compliance professionals at smaller firms should not be held to standards that presuppose resources, staffing levels, or budgetary authority their firms have not provided.

A firm's supervisory framework should be evaluated in light of its size, structure, business model, communications volume, customers, available resources, and risk profile**.**

In NSCP's view, proportionality is not inconsistent with effective investor protection. To the contrary, allowing firms to focus limited compliance resources on the communications presenting the greatest risks may improve the effectiveness of their overall supervisory programs.

Examination and Documentation Expectations

Because the proposed framework places greater emphasis on firm-level judgment, NSCP believes it is particularly important for FINRA to provide clarity regarding how firms' risk-based supervisory systems will be evaluated during examinations. Without such clarity, compliance professionals (who advise their firms on the design and defense of these programs but do not control the resources, personnel, or management decisions necessary to implement them) face unacceptable uncertainty regarding the standards to which they will be held.

Firms will need to be able to demonstrate that their supervisory procedures are reasonably designed, appropriately implemented, and followed. Compliance professionals who advise on the development of those procedures should be evaluated based on the reasonableness of their advice, not on whether the firm or its supervisory personnel adequately implemented or followed the procedures.

We encourage FINRA to focus its examination approach on whether:

- the firm's procedures appropriately reflect its business and risk profile;
- the firm has identified and assessed the principal risks associated with its communications;
- the firm has established appropriate criteria for determining the level of review required;
- employees responsible for communications have been appropriately trained;
- the firm is following its written procedures;
- the firm has assigned appropriate surveillance and follow-up to persons with the authority and resources to perform those functions; and
- the firm's supervisory system is reasonably designed to identify and address communications presenting elevated risk.

We also encourage FINRA to recognize that reasonable risk-based supervision necessarily involves judgment**.** Examination findings should not be based solely on the fact that, in hindsight, an individual communication might have been reviewed differently. Instead, we feel strongly that examination findings should be based on the adequacy and consistency of the application of the factors that determined the firm's risk-based approach to reviewing such communications. Specifically, the relevant question should be whether the firm's supervisory framework was reasonably designed and reasonably applied based on the information and circumstances known at the time.

Providing clarity on this point would be particularly valuable to the compliance professionals who will be responsible for advising and defending these programs. NSCP urges FINRA to issue guidance expressly acknowledging that compliance professionals exercising reasonable judgment should be protected from personal liability when their risk-based recommendations, viewed at the time they were made, reflected a good-faith effort to address identified risks.

Finally, compliance professionals must not face personal sanctions or enforcement actions based on hindsight review of advisory recommendations that were reasonable when made. The standard applied to compliance professionals should reflect their actual authority within the organization, but not the final supervisory decisions made by firm management.

Harmonization with the SEC Marketing Rule

NSCP supports FINRA's efforts to increase harmonization between Rule 2210 and the SEC's Marketing Rule.

Many financial services organizations operate as dual-registrants, where a central team of compliance professionals may be responsible for advising on and administering programs governing communications subject to both FINRA and SEC requirements. Differences between substantially similar requirements can create unnecessary complexity and make the development and administration of compliance programs more difficult.

Greater alignment between FINRA's communications requirements and the SEC's Marketing Rule will provide dual-registrant firms the opportunity to develop more consistent supervisory policies and procedures while reducing the possibility that similar communications are treated differently solely because of the firm's regulatory status.

NSCP therefore encourages FINRA to continue pursuing meaningful harmonization with the SEC's communications and marketing framework with respect to hypothetical performance framework**,** provided that investor protections are maintained.

We believe that reducing unnecessary regulatory differences can benefit both firms and regulators by making compliance requirements clearer and more consistent, while allowing compliance professionals to devote greater attention to substantive risks.

Emerging Technologies and Artificial Intelligence

As FINRA has acknowledged, the communications environment continues to evolve, including through the increasing use of AI and other technologies.

The increasing use of these technologies reinforces the value of a risk-based supervisory framework. Firms may use new technologies in different ways and may face different risks depending on their business models, communication channels, and particular use of the technology. A principles-based approach can allow firms to develop supervisory procedures that appropriately address those risks without requiring FINRA's rules to prescribe a particular technology or methodology.

NSCP therefore encourages FINRA to preserve sufficient flexibility for firms to adapt their supervisory systems as communications technologies continue to evolve. In our view, the focus should remain on whether a firm's overall supervisory framework is reasonably designed to identify and mitigate the risks associated with its communications**,** rather than on prescribing specific technological solutions.

This approach would allow firms and compliance professionals to respond to emerging technologies—including AI—as their uses and associated risks develop, while maintaining appropriate supervisory and investor-protection standards.

Other Proposed Amendments

NSCP generally supports FINRA's broader effort to modernize Rule 2210 and believes that the proposed changes should help make the rule more consistent with current communications practices.

We also support efforts to streamline and clarify the regulatory framework governing communications with the public, including proposed changes intended to reduce unnecessary burdens and improve consistency across the rules.

Given the significant focus of this letter on the proposed risk-based supervisory framework, however, we do not address each proposed amendment to Rule 2210 in detail. Instead, we encourage FINRA to evaluate the remaining proposed changes consistently with the broader objective of modernizing communications regulation while preserving appropriate investor protections and allowing firms to allocate compliance resources based on risk.

Conclusion

NSCP appreciates FINRA's efforts to modernize Rule 2210 and strongly supports the proposed transition toward a more risk-based approach to communications supervision.

We believe the proposal has the potential to improve the effectiveness of communications supervision by allowing firms to focus their compliance resources on communications presenting greater risk while reducing unnecessary prescriptive requirements for lower-risk communications.

At the same time, the proposed framework represents an important evolution in the role of the compliance professional. By placing greater reliance on firm-level risk assessment and supervisory judgment, the proposal will require compliance professionals to design, implement, document, and oversee systems that are reasonably designed to address their firm's particular communications risks. It is therefore essential that FINRA recognize that this enhanced advisory responsibility must be matched by clear regulatory guidelines and examination protocols that ensure that compliance professionals are not held to a standard of accountability that exceeds their actual authority within the organization.

For that reason, NSCP encourages FINRA to:

1. Adopt the proposed risk-based approach while preserving meaningful flexibility for firms to design supervisory systems appropriate to their circumstances and for compliance professionals to advise on and administer those systems within the scope of their actual roles and authority;
2. Avoid prescribing a single methodology for implementing risk-based communications supervision;
3. Ensure that the framework is appropriately scalable for firms of different sizes, structures, business models, and resources;
4. Provide sufficient clarity regarding FINRA's examination expectations and recognize the role of reasonable professional judgment in risk-based supervision and expressly protect compliance professionals from personal liability for good-faith recommendations;
5. Continue efforts to harmonize FINRA's communications requirements with the SEC Marketing Rule; and
6. Allow firms to develop technology- and AI-related controls based on the risks associated with their particular uses rather than prescribing specific technologies or methodologies.

NSCP believes these principles would allow FINRA to achieve the objectives of Regulatory Notice 26-14 while providing compliance professionals with the flexibility and clarity necessary to advise on and administer effective compliance programs, without treating them as supervisors or holding them accountable for matters beyond their authority or control.

Thank you for considering NSCP's comments and for FINRA's continued engagement with compliance professionals and other industry stakeholders. We would welcome the opportunity to continue the dialogue with FINRA and its staff regarding the practical implementation of the proposed amendments. Please do not hesitate to contact me at (860) 419-5003 or melissa@nscp.org with any questions.

Sincerely,

Melissa Loner

Melissa Loner, MBA, CAE
CEO, National Society of Compliance Professionals