From:	James
To:	secretarys-office@sec.gov
Cc:	SEC Office of the Small Business Advocate; oig@sec.gov; rule-comments@sec.gov; OIRA_submission@omb.eop.gov; Virginia.Grebasch@cigie.gov; paperworkreductionact@sec.gov; answerdesk@sba.gov; RedTape@sba.gov; GCProfessionalConduct@sec.gov; AmicusRequest@sec.gov
Subject:	SR-FINRA-2026-004 — Obelisk Comment, FINRA Nonresponse, and Required Commission Findings
Date:	Wednesday, July 22, 2026 2:47:34 PM
Attachments:	SR-FINRA-2026-004-Amendment-1 (1).pdf SR-FINRA-2026-004-Response-to-Comments-20260630 (1).pdf Obelisk_SR-FINRA-2026-004_Comment_Nonresponse.pdf

Secretary's Office:

Please accept and place this email, the attached Obelisk comment, and the accompanying exhibits in the public record for **File No. SR-FINRA-2026-004**.

The attached submission addresses a narrow but consequential issue: **FINRA asked the Commission to treat its June 30, 2026 letter as FINRA's rebuttal to all three comments submitted after the Order Instituting Proceedings, but then expressly stated that it "declines to respond" to Obelisk's comment.**

FINRA acknowledged Obelisk's fifty-nine-page comment and fifty-six-page sworn administrative record. It characterized the submission as outside scope, asserted without specification that Obelisk cited inapplicable authorities, and claimed that Obelisk failed to identify the affected provisions. It did not, however, substantively answer Obelisk's evidence, legal arguments, economic analysis, proposed alternatives, or requested findings.

That nonresponse does not resolve the merits.

FINRA is the proponent of the proposed rule change. The Commission is the federal decision-maker responsible for determining whether the proposal satisfies the Securities Exchange Act. FINRA may argue that evidence is irrelevant or outside scope, but it cannot conclusively define the legal scope of the Commission's statutory inquiry through characterization alone.

Obelisk's current submission identifies the precise provisions implicated by Partial Amendment No. 1, including:

- removal of the express reasonable-basis requirement;
- substitution of existing general content standards;
- creation of a source-recordkeeping obligation;
- removal of express disclosure requirements concerning fees, expenses, and reasons projected performance may differ from actual performance; and
- the absence of reliance protections, small-firm scaling, cure provisions, and other materially less burdensome alternatives.

The submission also identifies the precise economic mechanism FINRA did not analyze:

> Rule 2210 compliance, documentation, legal-review, and interpretive costs increase the fixed cost of broker-dealer participation; broker-dealers recover those

costs through retainers, deposits, commissions, minimum offering sizes, delay, indemnification demands, or refusal to participate; and those effects are transmitted to small issuers through higher costs, reduced intermediary availability, and a higher minimum viable offering size.

FINRA did not quantify or segment those costs. It did not determine how the burdens differ by broker-dealer size, communication volume, or offering size. It did not examine whether the costs are passed through to issuers, reduce intermediary participation, increase concentration, or impair Regulation A and Regulation S capital formation.

Those omissions directly concern the findings the Commission must make.

Under **Exchange Act § 15A(b)(9)**, FINRA rules may not impose a burden on competition that is unnecessary or inappropriate in furtherance of the Exchange Act. The existing record does not contain a provision-specific analysis of fixed costs, competitive incidence, market concentration, downstream issuer effects, or materially less burdensome alternatives.

Under **Exchange Act § 3(f)**, the Commission must consider whether its action will promote efficiency, competition, and capital formation. That inquiry cannot stop at the direct effect on FINRA members where the identified mechanism concerns transmission through broker-dealers to issuer access, offering viability, and capital formation.

Under **Exchange Act § 19(b)(2)(C)**, the Commission may approve the proposal only if it affirmatively finds the proposal consistent with the Exchange Act and applicable rules. If the Commission cannot make that finding, it must disapprove. FINRA's refusal to answer a material submission is not affirmative evidence of statutory consistency.

The attached comment does not contend that FINRA is itself a federal agency subject to the Administrative Procedure Act or Regulatory Flexibility Act. It carefully directs those authorities to the Commission's governmental action and uses small-entity methodology to identify the analysis the record lacks: affected entities, fixed and recurring costs, overlapping obligations, distributional effects, and significant lower-burden alternatives.

FINRA's treatment of the record is also materially asymmetrical. FINRA substantively engaged incumbent industry commenters who raised duplication, operational complexity, unclear standards, and recordkeeping burdens, and it amended the proposal in response. That amendment confirms that compliance burden and operational uncertainty are material to this proceeding. Yet FINRA declined to examine the same class of burden when Obelisk traced it downstream to small issuers and capital formation.

Obelisk respectfully requests that the Commission:

1. accept and post the attached submission and exhibits;
2. recognize that FINRA acknowledged but did not substantively answer Obelisk's material concerns;
3. independently determine the relevance of Obelisk's evidence and legal arguments;
4. require FINRA to identify each Obelisk issue it considers answered, unanswered, immaterial, or outside scope;
5. require FINRA to identify each authority it contends is inapplicable and explain the legal basis for that conclusion;
6. require a provision-specific analysis under §§ 15A(b)(6), 15A(b)(9), 3(f), 23(a)(2), and

19(b)(2)(C);

7. require analysis of fixed and recurring costs by firm size, communication volume, and offering size;
8. require analysis of downstream effects on small issuers, intermediary availability, offering viability, and capital formation;
9. require reasoned consideration of safe harbors, reliance protections, tiering, simplified procedures, cure provisions, and other materially less burdensome alternatives; and
10. decline to approve the proposal unless the Commission independently resolves the unanswered issues and can make the affirmative finding required by § 19(b)(2)(C).

The merits of Obelisk's submission should be examined rather than displaced by FINRA's procedural characterization.

Acknowledgment is not analysis. Characterization is not rebuttal. An unanswered material issue remains unanswered until the Commission resolves it on an adequate record.

Respectfully,

James H. Poole
Executive Chairman & Chief Executive Officer
Obelisk Tech Systems, Inc.

Attachments:

1. Comment of Obelisk Tech Systems, Inc. Regarding FINRA's Express Nonresponse and the Commission's Required Statutory Findings
2. FINRA Response to Comments, File No. SR-FINRA-2026-004, June 30, 2026
3. FINRA Partial Amendment No. 1, File No. SR-FINRA-2026-004, June 30, 2026

U.S. Securities and Exchange Commission
Vanessa A. Countryman, Secretary
100 F Street, NE, Washington, DC 20549
Submitted electronically via rule-comments@sec.gov and the Commission's electronic comment form

Re: File No. SR-FINRA-2026-004 — Comment on FINRA's Proposed Amendments to Rule 2210 Governing Projections of Performance and Targeted Returns, Addressing FINRA's June 30, 2026 Response to Comments and Partial Amendment No. 1

COMMENT REGARDING FINRA'S EXPRESS NONRESPONSE AND THE COMMISSION'S REQUIRED STATUTORY FINDINGS

Demonstrating the Unresolved Competition, Capital-Formation, Small-Issuer, Evidentiary, and Less-Burdensome-Alternative Issues in File No. SR-FINRA-2026-004

Dated: July 22, 2026

I. Executive Summary

Obelisk Tech Systems, Inc. ("Obelisk") submits this comment in File No. SR-FINRA-2026-004 in response to FINRA's June 30, 2026 Response to Comments and Partial Amendment No. 1. The Commission instituted proceedings under Exchange Act § 19(b)(2)(B) to determine whether to approve or disapprove FINRA's proposed amendments to Rule 2210 governing projections of performance and targeted returns, and it received three comments in response to that Order Instituting Proceedings.[1] Obelisk's May 27, 2026 comment, accompanied by a sworn administrative record, was one of the three.[2]

FINRA expressly asked the Commission to treat its June 30 letter as FINRA's rebuttal to all three of those comments, including Obelisk's.[3] FINRA then described Obelisk's fifty-nine-page comment and fifty-six-page sworn administrative record, characterized the submission as outside the scope of the proposal, asserted that it cited statutes or rules FINRA considered inapplicable and did not identify the provisions at issue, and stated that FINRA "declines to respond" to Obelisk's comment.[4] Partial Amendment No. 1 again identified Obelisk as a commenter and incorporated the separate Response to Comments as the rebuttal to the three comments, but supplied no independent response to Obelisk on the merits.[5]

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[1] Order Instituting Proceedings, Securities Exchange Act Release No. 105524, 91 FR 30750 (May 26, 2026) (File No. SR-FINRA-2026-004); *see also* FINRA, Response to Comments, File No. SR-FINRA-2026-004, at 2 & nn.3–4 (June 30, 2026) (identifying the three commenters that responded to the Order Instituting Proceedings).

[2] FINRA, Response to Comments, File No. SR-FINRA-2026-004, at 2 & n.4 (June 30, 2026) (identifying Obelisk as one of the three commenters responding to the Order Instituting Proceedings). Subsequent citations to this document appear in short form as "FINRA Response," followed by the pinpoint page.

[3] FINRA Response, at 2 & n.6 (requesting that the letter be considered FINRA's rebuttal to the comment letters submitted in response to the Order Instituting Proceedings).

[4] FINRA Response, at 3–4 & n.9.

[5] FINRA, Partial Amendment No. 1, File No. SR-FINRA-2026-004, at 4 & n.6 (June 30, 2026). Subsequent citations appear in short form as "Partial Amendment No. 1," followed by the pinpoint page.

FINRA may designate its June 30 letter as its rebuttal, and it may decline to answer Obelisk. What the letter cannot do is function as a substantive rebuttal to Obelisk while declining to address the comment's evidence, statutory arguments, economic mechanism, and requested findings. Acknowledging a submission, describing its length, and characterizing it as outside scope are not a substantive answer to the issues placed before the Commission. That distinction is not a debating point; it is determinative of the evidentiary posture now facing the Commission. Under Exchange Act § 19(b)(2)(C), the Commission may approve the proposal only if it affirmatively finds the proposal consistent with the Exchange Act and the applicable rules, and it must disapprove if it cannot make that finding.[6] FINRA's refusal to engage Obelisk does not supply that affirmative finding; an unanswered material issue remains unanswered, and the Commission may not treat a proponent's silence as evidence of statutory consistency. The nonresponse does not narrow the Commission's options to disapproval alone: the Commission may independently resolve the issues on an adequate record, require FINRA to supplement, reopen the comment period, condition or narrow any approval, or disapprove if it cannot make the required finding.

Three features of this record make the point unavoidable. First, FINRA is the proponent of the rule, not the tribunal that determines the legal scope of the Commission's inquiry; whether Obelisk's competition, capital-formation, small-issuer, and cumulative-burden evidence is relevant to the Commission's duties under §§ 3(f), 15A(b), and 19(b)(2)(C) is a question for the Commission, not for the rule's proponent to answer by characterization.[7] Second, FINRA engaged the burden, duplication, and operational-uncertainty arguments of incumbent industry commenters in detail and amended the proposal in response to them, which establishes that compliance burden and operational uncertainty are material to this proceeding; FINRA cannot treat the same class of burden as immaterial when Obelisk traces it downstream to small-issuer capital formation.[8] Third, FINRA did not identify a single authority it contends is inapplicable, or state why, and did not analyze the specific Rule 2210 provisions Obelisk's comment addressed; a conclusory "outside scope" label is not the provision-by-provision analysis the Commission needs to determine whether the issues were resolved.

The mechanism Obelisk traces is concrete and provision-specific: the amended content standards impose communications-compliance cost and legal uncertainty on the broker-dealer; the broker-dealer prices, delays, or declines that participation; and because those costs are largely fixed and scale-insensitive, they fall hardest on small offerings, raising the minimum offering size at which intermediated distribution is economic and thereby narrowing small-issuer access to capital. That chain — rule text to member cost to intermediary response to issuer access to capital-formation effect — is what §§ 15A(b)(9) and 3(f) require the Commission to analyze, and what the record FINRA supplied does not.

[6] 15 U.S.C. § 78s(b)(2)(C).

[7] 15 U.S.C. §§ 78c(f), 78o-3(b), 78s(b)(2)(C).

[8] Partial Amendment No. 1, at 5–8 (revising the proposal in response to commenters' contentions that the express reasonable-basis requirement was duplicative, burdensome, or unclear, and revising the projection-disclosure provisions).

Obelisk does not contend that FINRA is a federal agency, that the Administrative Procedure Act or the Regulatory Flexibility Act binds FINRA directly, or that Regulation A categorically requires a registered broker-dealer for every offering. The precise and durable propositions are narrower and stronger: the Administrative Procedure Act governs the Commission's eventual approval order as final agency action; the small-entity analysis the Regulatory Flexibility Act embodies is directly relevant to the Commission's governmental action and supplies the analytical benchmark for the segmented record this proposal lacks; and although Regulation A permits direct issuer activity in defined circumstances, the practical distribution of Regulation A and Regulation S offerings frequently depends on broker-dealer participation, so a Rule 2210 amendment that changes the cost and legal uncertainty of that participation affects the price, availability, and minimum economic scale of intermediation on which small-issuer capital formation depends.

Obelisk therefore requests that the Commission accept and post this comment; recognize that FINRA did not substantively rebut Obelisk's material concerns; require FINRA to identify, issue by issue, which of Obelisk's concerns it regards as answered, unanswered, outside scope, immaterial, or governed by an authority it contends is inapplicable, and to identify each such authority and explain the basis for the contention; require the provision-specific competition, fixed-cost, small-issuer, capital-formation, and less-burdensome-alternative analysis the record lacks; and decline to approve the proposal unless and until the Commission independently resolves the unanswered issues and can make the affirmative finding Exchange Act § 19(b)(2)(C) requires.

Five grounds control this submission, and Obelisk asks the Commission to treat them as its core. First, a filing designated as FINRA's rebuttal to Obelisk cannot function as a rebuttal where FINRA expressly declined to respond. Second, Exchange Act § 19(b)(2)(C) requires an affirmative Commission finding of consistency, and an unanswered material issue cannot be treated as resolved. Third, § 15A(b)(9) requires a provision-specific competition showing that the record does not contain. Fourth, § 3(f) requires a downstream capital-formation analysis that FINRA's member-level record does not supply. Fifth, the record contains no reasoned treatment of the materially less burdensome alternatives Obelisk identified. The remaining points in this comment support these five; they are not presented as equal in weight. In a closely analogous posture, the D.C. Circuit recently set aside the Commission's approval of a FINRA rule where the Commission failed to respond adequately to a commenter's cost concerns, which frames what a lawful approval order in this proceeding must contain.[9]

II. Procedural Background

The relevant procedural history is short and is established entirely by FINRA's own filings.

The Commission published FINRA's proposed rule change amending Rule 2210's treatment of projections of performance and targeted returns and, after receiving comment, instituted proceedings under Exchange Act § 19(b)(2)(B) to determine whether to approve or disapprove

[9] Bloomberg L.P. v. SEC, 45 F.4th 462, 472–80 (D.C. Cir. 2022).

the proposal.[10] The Commission received three comments in response to that Order.[11] Obelisk's comment, dated May 27, 2026 and submitted to the Secretary, was one of the three; the other two were submitted by North Capital Private Securities and by the Managed Fund Association.[12]

FINRA's June 30, 2026 Response to Comments addresses Partial Amendment No. 1 and the comments received on both the initial rule filing and the Order Instituting Proceedings.[13] FINRA asked the Commission to treat the Response as FINRA's rebuttal to the comment letters submitted in response to the Order Instituting Proceedings.[14] FINRA then summarized Obelisk's fifty-nine-page comment and its fifty-six-page sworn administrative-record attachment; asserted that the submission did not address the substance of the proposal, was largely outside the proposal's scope, cited statutes or rules FINRA regarded as inapplicable, and did not identify the provisions of the proposal that were the source of Obelisk's concern; and stated that, accordingly, FINRA "declines to respond" to Obelisk's comment.[15] Partial Amendment No. 1, filed the same day, again identified Obelisk as one of the commenters responding to the Order Instituting Proceedings and stated that the separate Response to Comments should also be considered FINRA's rebuttal to those three comments, but it contained no independent, merits response to Obelisk.[16]

The substance of the proposal, as revised by Partial Amendment No. 1, is directly relevant to what follows, because it defeats FINRA's assertion that Obelisk failed to identify affected provisions. The proposal amends Rule 2210's content standards for communications that contain projections of performance or targeted returns. In response to comments contending that an express reasonable-basis requirement was duplicative, burdensome, unclear, or difficult for firms relying on third-party information, FINRA removed the express reasonable-basis requirement, retained Rule 2210's existing content standards, and added a requirement that members maintain written records concerning the source of any projection of performance or targeted return.[17] The proposal also removes the express requirements that a communication disclose the reasons a projection might differ from actual performance and whether a projection is net of anticipated fees and expenses, relying instead on Rule 2210's general standard that a communication

[10] Order Instituting Proceedings, Securities Exchange Act Release No. 105524, 91 FR 30750 (May 26, 2026) (File No. SR-FINRA-2026-004). The Order Instituting Proceedings is the procedural posture that governs this docket: the proposal is in a proceeding to determine whether it should be approved or disapproved, and the Commission's affirmative-finding obligation under § 19(b)(2)(C) is therefore directly engaged.

[11] FINRA Response, at 2 & nn.3–4.

[12] FINRA Response, at 2 n.4 (identifying the letters from James Hunter Poole, Executive Chairman and Chief Executive Officer, Obelisk Tech Systems, Inc. (May 27, 2026); James P. Dowd, North Capital Private Securities (June 2, 2026); and Jennifer W. Han, Managed Fund Association (June 16, 2026)).

[13] FINRA Response, at 1–2.

[14] FINRA Response, at 2 & n.6.

[15] FINRA Response, at 3–4 & n.9. Obelisk quotes the operative phrase only to establish the disposition; the balance of FINRA's characterization is paraphrased.

[16] Partial Amendment No. 1, at 4 & n.6.

[17] Partial Amendment No. 1, at 5–7. FINRA's decision to revise the proposal in direct response to these burden and operational-uncertainty contentions is significant for the reasons developed in Part VI: it confirms that compliance burden and operational uncertainty are material to this proceeding.

disclose sufficient information to be clear and not misleading in context.[18] Obelisk's comment addressed these very provisions — the content standards governing projections and targeted returns, the reasonable-basis and recordkeeping treatment, and the disclosure standard applied to projected and targeted performance — and connected them to the Commission's statutory obligations. FINRA's contention that Obelisk did not identify the provisions at issue is therefore contradicted by the proposal's own text and by Obelisk's comment.[19]

III. FINRA's Rebuttal Designation and Express Nonresponse

FINRA's June 30 filing makes two statements the Commission must reconcile. It asked that its June 30 letter be treated as its rebuttal to the three comments submitted in response to the Order Instituting Proceedings, and it stated that it declines to respond to one of those three comments.[20] A rebuttal is a substantive answer to an opposing position; a refusal to respond is the absence of one. FINRA may designate its letter as a rebuttal, and it may decline to answer Obelisk. What the letter cannot do is function as a substantive rebuttal to Obelisk while declining to engage Obelisk's evidence and statutory arguments. The consequence is not that FINRA has contradicted itself; it is that the Response supplies no substantive answer to Obelisk's objections, no affirmative evidence that those objections are met, and no basis on which the Commission can treat them as resolved. The sequence is straightforward: FINRA's nonresponse leaves each material issue unresolved; an unresolved issue leaves the Commission without the evidentiary or analytical predicate for the finding § 19(b)(2)(C) requires; the Commission must therefore resolve the issue independently, on an adequate record, before it can approve; and approval without that resolution would rest on an unsupported final order.

The distinction between the several things FINRA did and the one thing it did not do controls the analysis. FINRA acknowledged Obelisk's submission; it described the submission's length; it characterized the submission as outside scope; and it declined to engage the submission on the merits.[21] Acknowledgment establishes that FINRA received the comment. Description establishes that FINRA read enough of the comment to summarize its length and attachments. Characterization states FINRA's litigating position about the comment. None of the three is consideration of the comment's evidence and argument, and none is a rebuttal. Obelisk does not contend that FINRA ignored the filing; the accurate and stronger proposition is that FINRA acknowledged the filing and expressly declined to answer it. That is precisely the disposition that leaves the Commission without the record its own statute requires.

FINRA's two characterizations also sit uneasily together. FINRA asserted both that Obelisk's submission was outside the proposal's scope and that Obelisk did not identify the provisions of

[18] Partial Amendment No. 1, at 7–8; *see* Rule 2210(d)(1)(A), (B), (F).

[19] Comment of Obelisk Tech Systems, Inc., File No. SR-FINRA-2026-004 (May 27, 2026) (addressing, among other things, the Rule 2210 content standards governing projections and targeted returns, the treatment of projection sources and reasonable basis, and the downstream effect of communications-compliance cost and legal uncertainty on intermediated small-issuer capital formation). Subsequent citations appear in short form as "Obelisk Comment."

[20] FINRA Response, at 2 & n.6 (rebuttal designation); *id.* at 3–4 & n.9 (declining to respond to Obelisk).

[21] FINRA Response, at 3–4 & n.9.

the proposal at issue.[22] Identifying the provisions is what situates a comment within a proposal's scope, so the second characterization undercuts the first rather than reinforcing it. Appendix A sets out each of FINRA's characterizations beside the specific provisions and record that answer it. In fact Obelisk's comment identified and addressed the specific content-standard, reasonable-basis, recordkeeping, and projection-disclosure provisions that the proposal amends, and tied them to the Commission's statutory obligations.[23] FINRA's contrary characterization is not a substantive response; it is a conclusion offered in place of the provision-by-provision analysis that would be required to sustain it.

IV. The Commission, Not FINRA, Controls the Approval Inquiry and Owes an Independent Finding

IV.A. FINRA Is the Proponent; the Commission Is the Decision-Maker

FINRA is a registered national securities association and self-regulatory organization; it is the proponent of the proposed rule change.[24] The Commission is the federal decision-maker that must approve or disapprove the proposal under Exchange Act § 19(b).[25] A proponent may argue that particular evidence falls outside its preferred presentation of the rule, but a proponent does not determine the legal scope of the Commission's statutory inquiry. Whether Obelisk's competition, capital-formation, small-issuer, and cumulative-burden evidence is relevant to the Commission's obligations under §§ 15A(b)(6), 15A(b)(9), 3(f), 23(a)(2), and 19(b)(2)(C) is a question the Commission answers, not one FINRA resolves by labeling the evidence out of scope.[26] FINRA's assertion that evidence is beyond the scope of its preferred rule presentation does not establish that the evidence is irrelevant to the Commission's independent statutory findings.

IV.B. The § 19(b)(2)(C) Finding Is Mandatory and Cannot Rest on Nonresponse

The Commission may approve a proposed rule change only if it finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations applicable to a national securities association; if the Commission cannot make that affirmative finding, it must disapprove.[27] That obligation runs to the Commission and is not discharged by the proponent's litigating choices. A refusal by FINRA to answer a material comment does not convert the unanswered issue into a resolved one, and the Commission may not treat FINRA's silence as affirmative evidence that the proposal satisfies the statute. For every issue identified in Parts VI and VII below, the operative consequence is the same: without the evidence, segmentation, explanation, or alternatives analysis that FINRA declined to supply, the Commission would lack

[22] FINRA Response, at 3–4 & n.9.

[23] Obelisk Comment; *see* Partial Amendment No. 1, at 5–8 (describing the reasonable-basis, recordkeeping, and projection-disclosure changes Obelisk's comment addressed).

[24] 15 U.S.C. § 78o-3(a)–(b) (registration and governance of national securities associations).

[25] 15 U.S.C. § 78s(b).

[26] 15 U.S.C. §§ 78o-3(b)(6), (9); 78c(f); 78w(a)(2); 78s(b)(2)(C).

[27] 15 U.S.C. § 78s(b)(2)(C).

a sufficient basis to make the affirmative finding § 19(b)(2)(C) requires, and would be required to disapprove.

The Commission's eventual order is itself final agency action subject to judicial review, and it must satisfy the standards that govern such review: it must be the product of reasoned decision-making, must rest on the record, must consider the important aspects of the problem and the significant comments and alternatives presented, and must not substitute a proponent's characterization for the Commission's own analysis.[28] An order that approved this proposal on a record from which the proponent had removed the competition, capital-formation, and small-issuer issues by characterizing them as outside scope — without the Commission independently determining their relevance and resolving them — would not satisfy that standard.

IV.C. Independent Judgment on the Governing Law

The Commission owes independent judgment on the meaning of the statutes that govern approval; it does not defer to the proponent's view of what those statutes require or of what evidence they make relevant.[29] That is decisive here, because FINRA's principal ground for nonresponse was a characterization of relevance and applicability — that Obelisk's issues were outside scope and that Obelisk's authorities did not apply. Those are legal characterizations, and they are the Commission's to make.

IV.D. Institutional Allocation of the Burdens of Production and Decision

Supports Controlling Grounds 1 and 2.

FINRA's nonresponse does not shift any burden back to Obelisk, because the burdens in this proceeding are allocated by function. Obelisk bears the burden of identifying material objections and placing sufficient evidence and analysis before the Commission to require their consideration; Obelisk has done so through its May 27 comment, its sworn administrative record, and this comment. FINRA, as the proponent of the rule, bears responsibility for supplying the proposal's factual basis, its statutory justification, and a reasoned treatment of the material burdens and alternatives the record presents. The Commission alone bears responsibility for making the affirmative consistency finding § 19(b)(2)(C) requires. FINRA's decision not to respond does not transfer the proponent's evidentiary responsibility, or the Commission's decisional duty, back to Obelisk.[30] A proponent cannot convert its own silence into a reason for the Commission to treat a commenter's objections as answered.

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[28] 5 U.S.C. § 706(2)(A), (C), (D); *see* Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (an agency must examine the relevant data and articulate a satisfactory explanation, including a rational connection between the facts found and the choice made). Obelisk does not contend that FINRA is subject to the Administrative Procedure Act; the standard is stated as a constraint on the Commission's eventual order.

[29] *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (courts exercise independent judgment in determining the meaning of statutory provisions). Obelisk does not contend that this principle resolves any interpretive question automatically in its favor; the point is only that FINRA's characterization of relevance and applicability does not bind the Commission's own reading of §§ 3(f), 15A(b), and 19(b).

[30] 15 U.S.C. § 78s(b)(2)(C). This describes the institutional allocation of functions in an approval proceeding; Obelisk does not characterize it as a formal evidentiary burden of proof.

IV.E. The Institutional Decision Chain and Actor Map

Supports Controlling Grounds 1 and 2.

Because FINRA's nonresponse turns on who is responsible for what, the institutions in this proceeding, and the boundaries between them, should be stated plainly. The sequence is: (1) FINRA proposes, explains, supports, amends, and responds; (2) the Commission's Office of the Secretary receives and maintains the public record; (3) the responsible Commission staff offices review the proposal, the economic record, the comments, the alternatives, and the statutory requirements and prepare recommendations; (4) the Commission makes the legally operative approval or disapproval decision and owns the reasoning stated in any final order; (5) OMB and OIRA, Congress, the Government Accountability Office, an inspector general, or the Small Business Administration's Office of Advocacy perform only their separately authorized review, oversight, analytical, or advisory functions where applicable; and (6) the reviewing federal court evaluates the final Commission action on the administrative record under the applicable review statute. Each requested action in this comment is directed to the actor legally empowered to take it, and no actor is asked to perform a function assigned to another.

Actor	Function it performs	What it cannot do	Output produced
FINRA	Proponent and self-regulatory organization: supports the proposal, amends it, and answers material issues	Make the Commission's statutory finding, or set the legal scope of the Commission's inquiry by characterization	Form 19b-4, amendments, responses to comments
SEC Office of the Secretary	Docket custodian: receives, posts, and preserves submissions	Decide the merits of the proposal	The public comment record
Responsible SEC staff (Division of Trading and Markets; economic-analysis staff)	Reviews the proposal, record, comments, and alternatives and prepares recommendations	Substitute a staff recommendation for the Commission's decision	Staff analysis and recommendation
SEC Office of the Advocate for Small Business Capital Formation	Advises on small-issuer capital-formation effects	Make or veto the decision	Advice, where requested

Actor	Function it performs	What it cannot do	Output produced
The Commission	Federal decision-maker: approves or disapproves on affirmative statutory findings and owns the order's reasoning	Rubber-stamp FINRA, or rest approval on the proponent's nonresponse	The final order under § 19(b)(2)
Reviewing court of appeals (§ 25)	Reviews the final order on the administrative record	Supply post hoc reasoning the Commission did not give	Judgment; remand or set-aside
OMB/OIRA, GAO, Inspector General, SBA Advocacy	Perform separately authorized review, oversight, analysis, or advocacy where jurisdiction exists	Make, or set aside, the Commission's decision	Their own conditional review products

V. The Controlling Statutory Framework

The Commission's approval inquiry is governed by mandatory statutory commands. Obelisk states them here with precision so that each unanswered issue can be tied to the specific provision it implicates.

V.A. Exchange Act § 15A(b)(5): Equitable Allocation of Reasonable Charges

FINRA's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using its facilities.[31] This provision governs dues, fees, and charges imposed by FINRA or through the facilities it operates or controls; it does not govern the private compliance costs — legal, recordkeeping, diligence, or labor — that a member incurs in order to comply with a rule. Section 15A(b)(5) is therefore implicated in this proceeding only if the Commission's approval results in a FINRA-imposed due, fee, or charge tied to projection communications, in which case the Commission must consider whether that charge is reasonable and equitably allocated between high-volume members and low-volume members and small offerings. The private compliance costs of the recordkeeping and general-standard requirements are analyzed in this comment under §§ 15A(b)(9) and 3(f), not under § 15A(b)(5).

[31] 15 U.S.C. § 78o-3(b)(5).

V.B. Exchange Act § 15A(b)(6): The Full Statutory Standard

FINRA's rules must be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest, and not to permit unfair discrimination among customers, issuers, brokers, or dealers, or to regulate matters not related to the purposes of the Exchange Act or the association's administration.[32] Investor protection is one command among several in the same subsection; it does not operate as an unlimited justification that displaces the free-and-open-market, anti-discrimination, and germaneness commands that accompany it. Where a proposal is defended by reference to investor protection, the Commission must still determine that the proposal removes rather than creates market impediments, does not effect unfair discrimination among issuers and dealers, and is designed — on evidence of identified harm, incidence, severity, materiality, and causal fit, distinguishing technical defects from material investor harm — to achieve the enumerated purposes.

V.C. Exchange Act § 15A(b)(9): No Unnecessary Burden on Competition

FINRA's rules may not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[33] This is a controlling command, not an afterthought. For each requirement the proposal imposes or retains, the Commission must be able to determine the direct and indirect burden, the fixed and variable components, the effect by firm size and communication volume, the effect on new entrants and on concentration among intermediaries, the effect on charges passed through to issuers, the effect on Regulation A and Regulation S distribution, and the availability of materially less burdensome alternatives that would serve the same purpose.

V.D. Exchange Act § 19(b)(1): The Filing Must Support Review

An association's proposed rule change must be accompanied by a concise general statement of the basis and purpose of the proposed rule change, and the statute contemplates a filing sufficient to permit interested persons to comment meaningfully and the Commission to determine consistency with the Exchange Act.[34] A filing record that labels a substantial comment outside scope without identifying and answering its material issues does not provide a transparent basis on which the public and the Commission can evaluate whether those issues were resolved.

V.E. Exchange Act § 19(b)(2)(C), § 3(f), and § 23(a)(2): The Commission's Findings

The Commission may approve only on an affirmative finding of consistency and must disapprove if it cannot make that finding.[35] In determining whether the proposal is in the public interest, the Commission must also consider whether the action will promote efficiency, competition, and capital formation.[36] And the Commission must consider the competitive effects

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32 15 U.S.C. § 78o-3(b)(6).

33 15 U.S.C. § 78o-3(b)(9).

34 15 U.S.C. § 78s(b)(1).

35 15 U.S.C. § 78s(b)(2)(C).

36 15 U.S.C. § 78c(f). This provision applies expressly to the Commission's consideration of Commission action under the Exchange Act, including its review of a self-regulatory organization's proposed rule change.

of its action and may not approve a rule that imposes a burden on competition not necessary or appropriate in furtherance of the Exchange Act.[37] The Commission's capital-formation and competition obligations are independent duties that a proponent's nonresponse cannot satisfy; a reviewing court has set aside Commission action for failure to fulfill the § 3(f) obligation to consider efficiency, competition, and capital formation with an adequate basis.[38] When it reviews a self-regulatory organization's proposal, the Commission must make its own findings on the record and may not substitute the organization's conclusions for its own.[39]

V.F. Administrative Procedure Act and Regulatory Flexibility Act: Stated with Precision

Obelisk directs these authorities to the Commission's governmental action and states them without overreach. FINRA is not a federal agency, and Obelisk does not argue that the Administrative Procedure Act or the Regulatory Flexibility Act binds FINRA directly. The Administrative Procedure Act bears on the Commission's eventual approval order as final agency action, which must rest on reasoned consideration of the material record, may not ignore important aspects of the problem or significant comments and alternatives, and may not rest on unsupported assumptions.[40] The Regulatory Flexibility Act's small-entity methodology — identification of affected small entities, projected compliance and recordkeeping requirements, and consideration of significant alternatives such as tiering, simplified requirements, differing timetables, and exemptions — is directly relevant to the Commission's governmental action and, at a minimum, supplies the analytical benchmark against which the adequacy of the segmented record for this proposal should be measured.[41]

VI. Ten Principal Unresolved Record Failures

Obelisk identifies the principal respects in which FINRA's June 30 filing fails to rebut Obelisk's comment and leaves material issues unresolved for the Commission. Each identifies a material unresolved issue that, alone or together with the related record deficiencies collected in Appendix I, requires either a supplemental FINRA response or the Commission's own resolution before approval. These failures are not presented as equal in weight; each supports one or more of the five controlling grounds.

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[37] 15 U.S.C. § 78w(a)(2).

[38] *See* Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (Commission acted arbitrarily in failing adequately to assess the economic effects, including on efficiency, competition, and capital formation). The proposition is stated as the standard governing the Commission's eventual order.

[39] *See* Susquehanna Int'l Grp., LLP v. SEC, 866 F.3d 442, 446–47 (D.C. Cir. 2017) (Commission must independently determine consistency with the Exchange Act and may not defer to a self-regulatory organization's determination); NetCoalition v. SEC, 615 F.3d 525, 539–44 (D.C. Cir. 2010) (Commission's approval of a self-regulatory organization's rule must rest on an adequate evidentiary and economic basis).

[40] 5 U.S.C. § 706(2)(A), (C), (D).

[41] 5 U.S.C. §§ 603–605. Obelisk does not contend that FINRA itself is a federal agency subject to every provision of the Regulatory Flexibility Act; the relevant question is whether the Commission's action and supporting record adequately address small-entity effects and materially less burdensome alternatives.

VI.1. FINRA Designated Its Letter a Rebuttal to Obelisk and Then Declined to Rebut Obelisk

Supports Controlling Ground(s) 1.

FINRA asked the Commission to treat its letter as its rebuttal to the three Order-Instituting-Proceedings comments and separately declined to respond to Obelisk, one of the three.[42] The designation does not make the letter a substantive answer to matters FINRA expressly declined to address. The Commission should require FINRA to identify where its letter answers Obelisk, or proceed on the understanding that those matters remain for the Commission to resolve.

VI.2. FINRA Substituted Characterization for Analysis

Supports Controlling Ground(s) 1 and 2.

FINRA asserted that Obelisk's submission did not address the proposal's substance, was outside scope, cited inapplicable authorities, and failed to identify affected provisions, but it did not demonstrate any of these conclusions through a provision-by-provision analysis.[43] A conclusory characterization is not a substantive response to the evidence and statutory theory placed before the Commission, and it cannot substitute for the analysis the Commission needs to determine whether Obelisk's issues were resolved.

VI.3. FINRA Does Not Determine the Relevance of Evidence to the Commission's Inquiry

Supports Controlling Ground(s) 1 and 2.

Obelisk's comment was submitted to the Commission, the decision-maker; FINRA is the proponent. FINRA's view that Obelisk's evidence is outside the proposal's scope does not determine whether that evidence is relevant to the Commission's independent duties under §§ 3(f), 15A(b), 19(b)(2)(C), and 23(a)(2).[44] The Commission must make that relevance determination itself.

VI.4. FINRA Did Not Answer the Capital-Formation Transmission Mechanism

Supports Controlling Ground(s) 4.

Obelisk's core mechanism is not that Regulation A is burdensome; it is that Rule 2210 compliance cost and legal uncertainty raise the cost and reduce the availability of the broker-dealer participation on which distribution of small Regulation A and Regulation S offerings frequently depends, which passes through to issuers as higher pricing, larger minimum offering sizes, delay, or refusal, and impairs capital formation.[45] FINRA did not analyze whether the proposal's projection-compliance and recordkeeping costs, or the uncertainty created by

[42] FINRA Response, at 2 & n.6; *id.* at 3–4 & n.9.

[43] FINRA Response, at 3–4 & n.9. A conclusory characterization by the proponent is not a reasoned response, and the Commission may not adopt it as a substitute for its own analysis. *See* Ohio v. EPA, 603 U.S. 279, 292–94 (2024); Am. Mining Cong. v. EPA, 907 F.2d 1179, 1190–91 (D.C. Cir. 1990); Bloomberg L.P. v. SEC, 45 F.4th 462, 472–80 (D.C. Cir. 2022).

[44] 15 U.S.C. §§ 78c(f); 78o-3(b); 78s(b)(2)(C); 78w(a)(2).

[45] Obelisk Comment.

replacing express disclosures with a general standard, are passed through to small issuers or reduce the availability of intermediary participation. That issue goes directly to the Commission's § 3(f) capital-formation analysis.

VI.5. No Substantive Response to § 15A(b)(9)'s Competition Limitation

Supports Controlling Ground(s) 3.

FINRA's rules may not impose a burden on competition that is unnecessary or inappropriate in furtherance of the Exchange Act.[46] FINRA did not identify or quantify the proposal's fixed compliance and recordkeeping costs, determine how those costs differ between large and small members, or explain why any resulting effect on the availability of intermediary participation is necessary or appropriate. This is a missing statutory showing, not a generalized cost complaint.

VI.6. No Answer to the Sworn Administrative Record

Supports Controlling Ground(s) 1 and 2.

FINRA noted the length and title of Obelisk's fifty-six-page sworn administrative record but did not identify any factual proposition in it that FINRA accepted, disputed, found unsupported, or deemed immaterial.[47] Receipt of evidence is not consideration of evidence. A record acknowledged but unexamined cannot support a finding that the proposal's factual premises are sound.

VI.7. FINRA Engaged Incumbent Commenters in Detail While Declining to Engage Obelisk

Supports Controlling Ground(s) 1 and 3.

FINRA addressed the burden, duplication, and operational-uncertainty contentions of industry commenters and revised the proposal in response to them, but declined to examine the downstream capital-formation burden presented by a small issuer.[48] Obelisk does not allege intentional favoritism; it states the record disparity. The Commission's record on burden is asymmetrical, developed for incumbents and left blank for small-issuer effects.

VI.8. FINRA Did Not Identify the Authorities It Contends Are Inapplicable

Supports Controlling Ground(s) 1.

FINRA asserted that Obelisk cited statutes or rules that do not apply, but it did not name a single such authority or explain why it is inapplicable.[49] The assertion is untestable as stated. The Commission should require FINRA to identify each authority it contends is inapplicable and to state whether its objection concerns jurisdiction, statutory text, procedural posture, direct

[46] 15 U.S.C. § 78o-3(b)(9).

[47] FINRA Response, at 3–4 & n.9.

[48] Partial Amendment No. 1, at 5–8 (revising the reasonable-basis, recordkeeping, and projection-disclosure provisions in response to commenters' burden and operational contentions); FINRA Response, at 3–4 & n.9 (declining to respond to Obelisk).

[49] FINRA Response, at 3–4 & n.9.

applicability to FINRA, or relevance to the Commission's decision, because those are different objections with different answers.

VI.9. No Quantified Small-Firm or Small-Issuer Analysis

Supports Controlling Ground(s) 3 and 4.

FINRA did not state what firms will pay to comply with the recordkeeping and general-standard requirements, how many principal or compliance hours are required, what outside-counsel or vendor costs arise, whether small dealers reduce their use of projections or targeted returns, or whether any of these costs are passed through to issuers.[50] The record lacks the segmentation necessary to determine whether aggregate estimates conceal disproportionate effects on low-volume dealers and small issuers, and aggregate averages are especially weak where the concern is fixed cost.

VI.10. No Analysis of Materially Less Burdensome Alternatives

Supports Controlling Ground(s) 5.

FINRA did not explain why materially less burdensome alternatives would fail to serve the proposal's purpose.[51] Obelisk identified concrete alternatives — a reliance safe harbor for projections drawn from Commission-filed or qualified disclosure, source-reliance for third-party projection data absent red flags, small-firm tiering, and cure and materiality provisions — and the absence of reasoned alternative analysis is central both to statutory consistency and to the Commission's reasoned-decision obligation.

VII. Unresolved Rule 2210 Cost, Competition, and Capital-Formation Issues in This Proposal

The issues below are anchored in the specific provisions SR-FINRA-2026-004 amends. They demonstrate that Obelisk identified affected provisions and addressed the proposal's substance, and that material issues remain unresolved on the record FINRA supplied. Each follows the same structure: the change; FINRA's position; the unresolved defect; the statutory command; the broker-dealer cost and issuer effect; a materially less burdensome alternative; and the consequence for the Commission's finding.

The Commission's Required Decision Sequence

Before approving any provision of the proposal, the Commission must be able to answer the following sequence for that provision. The questions are stated in words rather than as a diagram, and they organize the provision-specific analysis that follows.

1. What exact proposal provision is under review?
2. What investor harm or regulatory defect does the provision address?

[50] Partial Amendment No. 1, at 5–8 (member-level discussion without size or offering-size segmentation).

[51] 15 U.S.C. § 78o-3(b)(9) (competition limitation that requires consideration of less burdensome alternatives); *see* Partial Amendment No. 1, at 5–8.

3. What evidence establishes that harm's incidence, severity, and materiality?

4. What direct burden does the provision impose on members?

5. What indirect burden is transmitted to issuers?

6. How does the burden differ by firm size, communication volume, and offering size?

7. What materially less burdensome alternatives exist?

8. Why are those alternatives inadequate to serve the provision's purpose?

9. Does the provision satisfy §§ 15A(b)(6) and 15A(b)(9)?

10. Does the action promote efficiency, competition, and capital formation under § 3(f)?

11. Has the Commission considered the competitive effects the provision produces under § 23(a)(2)?

12. On the answers to the foregoing, can the Commission make the affirmative finding § 19(b)(2)(C) requires?

For each provision addressed below, the record FINRA supplied does not permit the Commission to complete this sequence.

Removal of a Prescriptive Requirement Does Not Establish Net Burden Reduction

Supports Controlling Grounds 2 and 3.

Several of the changes below remove an express requirement. Removal of a bright-line requirement may reduce prescribed conduct while increasing interpretive uncertainty, legal review, documentation, indemnity demands, and defensive overcompliance. The relevant question is therefore not whether one express requirement was removed, but whether the amendment's net effect reduces or relocates burden: the burden removed, minus the certainty lost, plus general-standard risk, plus documentation cost, plus defensive review, yields the net regulatory effect. FINRA analyzed only the burden removed. The Commission cannot find a change consistent with the Exchange Act without analyzing both sides of that equation.

VII.1. Removal of the "Reasons a Projection May Differ" Disclosure

Type of effect: Removed express requirement; substituted uncertainty. Supports Controlling Ground(s) 2 and 3.

The change. The proposal removes the express requirement to disclose the reasons a projection might differ from actual performance and relies on Rule 2210's general standard.[52] *FINRA's position.* The general content standards adequately ensure communications are clear and not misleading. *Unresolved defect.* FINRA did not identify the investor harm the removal addresses, the effect of the removal on the comparability and reliability of projection communications for investors, or the offsetting legal uncertainty the removal creates for firms and issuers. *Statutory command.* § 15A(b)(6) (investor protection and a free and open market); § 3(f). *Broker-dealer cost and issuer effect.* Uncertainty about what the general standard now requires for projections

[52] Partial Amendment No. 1, at 7–8; *see* Rule 2210(d)(1)(A), (B), (F); 15 U.S.C. § 78o-3(b)(6).

invites defensive over-disclosure and legal review, the cost of which is fixed and is passed through to, or withheld from, small offerings that use projections. *Less burdensome alternative.* Retain a compact, objective disclosure element whose satisfaction conclusively meets the standard, preserving certainty without reimposing an open-ended requirement. *Approval consequence.* Without a finding that the removal is consistent with investor protection and does not impair the free-market and capital-formation objectives, the Commission cannot make the § 19(b)(2)(C) finding.

VII.2. Removal of the "Net of Fees and Expenses" Disclosure

Type of effect: Removed express requirement; substituted uncertainty. Supports Controlling Ground(s) 2 and 3.

The change. The proposal removes the express requirement to disclose whether a projection is net of anticipated fees and expenses.[53] *FINRA's position.* The general standard captures any material omission. *Unresolved defect.* Whether a projection is net of fees is a first-order determinant of comparability; FINRA did not analyze the effect of removing a bright-line, comparability-preserving disclosure on investors, or the corresponding uncertainty for firms determining what the general standard requires. *Statutory command.* § 15A(b)(6). *Broker-dealer cost and issuer effect.* Firms must now assess, communication by communication, whether omission of a fees basis renders a projection misleading, a recurring judgment cost that falls hardest on low-volume firms and small offerings. *Less burdensome alternative.* A safe-harbor net-of-fees statement that satisfies the standard. *Approval consequence.* The Commission needs a reasoned basis to conclude the change protects investors and does not impair capital formation.

VII.3. Replacement of Bright-Line Disclosures With a General Standard Creates Interpretive Uncertainty

Type of effect: Substituted uncertainty. Supports Controlling Ground(s) 2 and 3.

The change. The proposal replaces express projection disclosures with reliance on Rule 2210's general "clear and not misleading" content standard.[54] *FINRA's position.* Reliance on the general standard reduces burden and prescriptiveness. *Unresolved defect.* A general standard applied after the fact can increase compliance, diligence, and indemnity cost, because firms over-comply to avoid a later determination that a projection was misleading; FINRA did not analyze this two-sided effect, which is most acute for firms relying on third-party projections. *Statutory command.* § 15A(b)(6), (8), (9). *Broker-dealer cost and issuer effect.* Legal review and indemnity demands rise with interpretive uncertainty and are recovered through pricing, minimum offering size, or refusal to carry projection-bearing small offerings. *Less burdensome alternative.* Publish objective interpretive criteria and safe harbors that give firms fair notice of what the general standard requires for projections. *Approval consequence.* The Commission must determine whether the net effect on burden and investor protection is consistent with the Exchange Act, which requires the analysis FINRA omitted.

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[53] Partial Amendment No. 1, at 7–8; 15 U.S.C. § 78o-3(b)(6).

[54] Partial Amendment No. 1, at 7–8; *see* Rule 2210(d)(1)(A), (B), (F); 15 U.S.C. § 78o-3(b)(6), (8).

VII.4. The New Source-Recordkeeping Requirement Is an Unsegmented Fixed Cost

Type of effect: New burden. Supports Controlling Ground(s) 3 and 4.

The change. The proposal requires members to maintain written records concerning the source of any projection of performance or targeted return.[55] *FINRA's position.* Source recordkeeping supports accountability for projections. *Unresolved defect.* FINRA did not quantify the recordkeeping cost, distinguish fixed from variable components, segment by firm size or offering size, or assess its interaction with existing books-and-records obligations. *Statutory command.* § 15A(b)(9); § 3(f). *Broker-dealer cost and issuer effect.* A fixed per-projection documentation cost is regressive against low-volume firms and small offerings and is passed through as higher intermediary pricing. *Less burdensome alternative.* Scaled recordkeeping for small and low-volume firms, a reliance-log safe harbor, and express reliance on existing records where they already capture the source. *Approval consequence.* Without a finding that the requirement imposes no unnecessary or inappropriate burden on competition and works no unfair discrimination among firms and issuers of different sizes, the Commission cannot approve.

VII.5. The Reasonable-Basis Removal Was Assessed for Incumbents, Not for Small-Issuer Effects

Type of effect: Removed express requirement; substituted uncertainty. Supports Controlling Ground(s) 4 and 5.

The change. FINRA removed the express reasonable-basis requirement in response to industry burden contentions and substituted general standards and recordkeeping.[56] *FINRA's position.* The removal reduces duplicative and unclear burden identified by commenters. *Unresolved defect.* FINRA analyzed the change for the commenters who raised it but did not trace the residual general-standard-plus-recordkeeping regime's downstream effect on small-issuer capital formation, and did not tie the change's investor-protection implications to evidence of harm, incidence, or severity. *Statutory command.* § 15A(b)(6), (b)(9); § 3(f). *Broker-dealer cost and issuer effect.* The residual regime still imposes documentation and interpretive cost whose incidence on small offerings is unexamined. *Less burdensome alternative.* Pair the removal with a reliance safe harbor and small-firm tiering so the residual cost does not fall regressively. *Approval consequence.* The Commission's record must address the small-issuer effect the amendment leaves unanalyzed.

VII.6. No Reliance Safe Harbor for Projections Drawn From Commission-Filed or Qualified Disclosure

Type of effect: Omitted reliance protection. Supports Controlling Ground(s) 5.

The change. The proposal preserves member responsibility for projection communications even where the projection is drawn from information filed with or qualified by the Commission.[57] *FINRA's position.* Existing content standards govern regardless of source. *Unresolved defect.*

[55] Partial Amendment No. 1, at 5–7; 15 U.S.C. § 78o-3(b)(9); 78c(f).

[56] Partial Amendment No. 1, at 5–7; 15 U.S.C. § 78o-3(b)(6), (9); 78c(f).

[57] 15 U.S.C. § 78o-3(b)(6), (9); 78c(f).

Requiring a member to re-verify a projection already contained in a qualified offering circular or Commission filing imposes duplicative review of information already subject to federal disclosure requirements, without a commensurate investor-protection benefit. *Statutory command.* § 15A(b)(6), (b)(9); § 3(f). *Broker-dealer cost and issuer effect.* Duplicative diligence is a fixed cost regressive against small offerings and is recovered through pricing or refusal. *Less burdensome alternative.* A safe harbor permitting reasonable reliance on projections drawn from Commission-filed or qualified disclosure absent actual knowledge or reason to know of material falsity. *Approval consequence.* The Commission must determine whether preserving the duplication is necessary or appropriate; the record does not support that determination.

VII.7. No Boundary Between Issuer-Created and Member-Adopted Projection Content

Type of effect: Retained uncertainty. Supports Controlling Ground(s) 2 and 5.

The change. The proposal governs projection communications used by the member without defining when issuer-created projection content becomes the member's regulated communication.[58] *FINRA's position.* Existing adoption principles apply. *Unresolved defect.* Without a codified boundary, participating dealers demand control over issuer projection content to manage exposure, raising issuer cost and delaying or defeating small offerings. *Statutory command.* § 15A(b)(6), (b)(9). *Broker-dealer cost and issuer effect.* Indemnity demands, review delay, and refusal to participate. *Less burdensome alternative.* Codify that participation in an offering does not by itself constitute adoption of the issuer's independent projection content, and that a member is responsible only for content it creates, adopts, or becomes entangled in preparing. *Approval consequence.* The Commission needs a determination that the undefined boundary does not create an unnecessary competitive burden.

VII.8. No Reliance Protection for Third-Party Projection Sources

Type of effect: New burden and substituted uncertainty. Supports Controlling Ground(s) 5.

The change. FINRA cited the difficulty firms face with third-party information as a reason to remove the express reasonable-basis requirement but did not provide affirmative reliance protection for third-party projection sources.[59] *FINRA's position.* The recordkeeping requirement and general standards address third-party projections. *Unresolved defect.* Documenting a source is not the same as protection for reasonable reliance on it; firms still bear re-derivation and verification cost for third-party projections, contrary to the burden reduction FINRA said it intended. *Statutory command.* § 15A(b)(9). *Broker-dealer cost and issuer effect.* Verification cost for third-party projections is fixed and regressive. *Less burdensome alternative.* A source-reliance safe harbor for third-party projection data absent red flags, paired with the recordkeeping requirement. *Approval consequence.* The Commission must assess whether the residual verification burden is necessary or appropriate.

VII.9. No Small-Firm or Low-Volume Compliance Pathway

Type of effect: New-burden incidence on small firms. Supports Controlling Ground(s) 3 and 5.

[58] 15 U.S.C. § 78o-3(b)(6).

[59] Partial Amendment No. 1, at 5–7; 15 U.S.C. § 78o-3(b)(9).

The change. The proposal applies the recordkeeping and general-standard requirements uniformly, without a simplified pathway for small or low-volume members.[60] *FINRA's position.* The requirements are calibrated to the risk projections present. *Unresolved defect.* FINRA invoked no small-firm tiering, model procedures, reduced documentation, or extended implementation, even though fixed costs fall hardest on the smallest members and the offerings they serve. *Statutory command.* § 15A(b)(6), (b)(9). *Broker-dealer cost and issuer effect.* Uniform fixed cost concentrates projection-bearing distribution among larger firms. *Less burdensome alternative.* Model procedures, reduced recordkeeping, and longer implementation for small and low-volume members. *Approval consequence.* Without a small-firm analysis, the Commission cannot find the proposal free of unnecessary competitive burden or unfair discrimination.

VII.10. No Capital-Formation Transmission Analysis Under § 3(f)

Type of effect: Cumulative interaction. Supports Controlling Ground(s) 4.

The change. The proposal alters the cost and legal certainty of using projections and targeted returns in member communications, including in offering communications for exempt offerings.[61] *FINRA's position.* The proposal concerns member communications and their content standards. *Unresolved defect.* FINRA did not trace the chain from projection-compliance cost and uncertainty to broker-dealer pricing and participation to issuer access and offering viability, which is the § 3(f) capital-formation inquiry. *Statutory command.* § 3(f). *Broker-dealer cost and issuer effect.* Where the cost or uncertainty of projection communications rises, dealers raise pricing, raise minimum offering size, or decline to carry projection-bearing small offerings. *Less burdensome alternative.* The safe harbors and tiering identified above, which preserve investor protection while removing the transmitted cost. *Approval consequence.* The Commission cannot make the § 3(f) determination on a record that stops at the member.

VII.11. No Fixed-Cost Competition Analysis Under § 15A(b)(9)

Type of effect: New-burden incidence (fixed cost). Supports Controlling Ground(s) 3.

The change. The proposal imposes fixed recordkeeping and interpretive-compliance costs that do not vary with communication volume or offering size.[62] *FINRA's position.* The costs are modest and generally applicable. *Unresolved defect.* FINRA did not analyze how fixed costs differ between large and small members, affect new entrants, or concentrate projection-bearing distribution. *Statutory command.* § 15A(b)(9). *Broker-dealer cost and issuer effect.* Fixed costs spread across many communications by large firms and across few by small firms produce unequal competitive effects. *Less burdensome alternative.* Scaling and safe harbors that neutralize the fixed-cost disadvantage. *Approval consequence.* The Commission must find any competitive burden necessary or appropriate, which requires the segmentation FINRA omitted.

[60] 15 U.S.C. § 78o-3(b)(6), (9).

[61] 15 U.S.C. § 78c(f).

[62] 15 U.S.C. § 78o-3(b)(9).

VII.12. No Equitable-Charge Analysis Under § 15A(b)(5)

Type of effect: Contingent FINRA charge. Supports Controlling Ground(s) 3.

The change. Section 15A(b)(5) governs the equitable allocation of reasonable dues, fees, and other charges imposed by FINRA or through the facilities it operates or controls.[63] *FINRA's position.* Charges are governed by existing fee provisions. *Unresolved defect.* To the extent the Commission's approval results in any dues, fee, or charge imposed by FINRA or through its facilities in connection with projection communications, the proposal does not address whether that charge is reasonable and equitably allocated between high- and low-volume members and small offerings; to the extent no FINRA-imposed charge attaches, § 15A(b)(5) is not implicated and the competitive-burden analysis proceeds under § 15A(b)(9). *Broker-dealer cost and issuer effect.* Any regressive FINRA charge is ultimately recovered from issuers. *Less burdensome alternative.* Proportionate or waived FINRA charges for small members and small offerings, where any such charge attaches. *Approval consequence.* Where a FINRA charge attaches, the Commission must find its allocation equitable; the private compliance costs of the recordkeeping and general-standard requirements are addressed under §§ 15A(b)(9) and 3(f), not under § 15A(b)(5).

VII.13. Regulation A Projections and Testing-the-Waters Receive No Tailored Treatment

Type of effect: Cumulative interaction (Regulation A). Supports Controlling Ground(s) 4.

The change. The proposal does not tailor the projection standards for Regulation A offering communications, including solicitations of interest permitted under Rule 255.[64] *FINRA's position.* Uniform standards apply to all member communications. *Unresolved defect.* Projections and targeted returns drawn from a qualified Form 1-A offering circular receive no reliance treatment, and Regulation A testing-the-waters communications receive no tailored projection standard, so the cost and uncertainty of member participation in Regulation A offerings rise. Regulation A does not categorically require a broker-dealer for every offering, but where distribution depends on broker-dealer participation, the proposal raises the price and minimum scale of that participation. *Statutory command.* § 3(f); § 15A(b)(6). *Broker-dealer cost and issuer effect.* Higher retainers, larger minimum offerings, or refusal for small Regulation A issuers. *Less burdensome alternative.* A Regulation A safe harbor for projections drawn from a qualified offering circular with required legends, and correspondence-level treatment of Rule 255 solicitations. *Approval consequence.* The Commission's capital-formation finding must address the Regulation A effect.

VII.14. Regulation S Offshore Projection Communications Receive No Safe Harbor

Type of effect: Cumulative interaction (Regulation S). Supports Controlling Ground(s) 3 and 4.

The change. The proposal does not address projection communications in Regulation S offerings that are directed offshore and contain no directed selling efforts in the United States.[65] *FINRA's*

[63] 15 U.S.C. § 78o-3(b)(5).

[64] 15 U.S.C. § 78c(f); § 78o-3(b)(6); *see* 17 C.F.R. § 230.255 (Regulation A solicitations of interest).

[65] 15 U.S.C. § 78o-3(b)(6), (9); § 78c(f); *see* 17 C.F.R. §§ 230.901–905 (Regulation S).

position. Member communications are governed uniformly. *Unresolved defect.* A member participating in a compliant Regulation S offering must apply the domestic projection regime to controlled offshore communications, raising cost and deterring the offshore channel that small and dual-use issuers use to reach non-U.S. investors. *Statutory command.* § 15A(b)(6), (b)(9); § 3(f). *Broker-dealer cost and issuer effect.* Over-blocking or expensive individualized review of offshore projection communications. *Less burdensome alternative.* A safe harbor for offshore projection communications that satisfy Regulation S and contain no directed selling efforts into the United States, maintained through geographic controls; U.S.-directed communications remain fully covered. *Approval consequence.* The Commission must consider the cross-border capital-formation effect.

VII.15. The Proposal's Cumulative Burden Is Unassessed

Type of effect: Cumulative interaction. Supports Controlling Ground(s) 3 and 4.

The change. The projection recordkeeping and interpretive-compliance requirements are added to an existing regime of communications supervision, books-and-records, offering review, and federal and state requirements.[66] *FINRA's position.* The change is incremental. *Unresolved defect.* FINRA did not assess whether an incremental requirement becomes material when layered onto the existing offering and intermediary regime. *Statutory command.* § 15A(b)(9); § 3(f). *Broker-dealer cost and issuer effect.* Cumulative fixed cost raises the minimum viable offering size. *Less burdensome alternative.* Evaluate the requirement against the cumulative baseline and scale accordingly. *Approval consequence.* The Commission cannot assess real economic effects on an isolated baseline.

VII.16. No Provision-Specific Investor-Harm Showing

Type of effect: Removed requirement without harm showing. Supports Controlling Ground(s) 2.

The change. The proposal is defended by reference to investor protection but is not tied to evidence of specific harm addressed by each projection change.[67] *FINRA's position.* Projections present investor-protection risk. *Unresolved defect.* FINRA did not, for each change, identify the harm addressed, quantify its incidence, establish its severity and materiality, or distinguish technical defects from material investor harm. *Statutory command.* § 15A(b)(6). *Broker-dealer cost and issuer effect.* Requirements justified by an undifferentiated interest impose cost without demonstrated benefit. *Less burdensome alternative.* Retain only those elements tied to demonstrated material harm; use safe harbors for the remainder. *Approval consequence.* The Commission must find a rational connection between each requirement and an identified statutory purpose.

VII.17. Aggregate Data Cannot Support a Fixed-Cost Proposal

Type of effect: Evidentiary defect. Supports Controlling Ground(s) 3 and 4.

[66] 15 U.S.C. § 78o-3(b)(9); § 78c(f).
[67] 15 U.S.C. § 78o-3(b)(6).

The change. FINRA's economic discussion addresses the proposal in the aggregate rather than by firm size, communication volume, and offering size.[68] *FINRA's position.* Aggregate estimates capture the proposal's effects. *Unresolved defect.* Aggregate averages conceal disproportionate effects where the concern is fixed cost, and the record lacks the segmentation necessary to detect them. *Statutory command.* § 15A(b)(9); § 3(f). *Broker-dealer cost and issuer effect.* Small firms and small offerings bear a disproportionate share hidden by averages. *Less burdensome alternative.* Segment the analysis by firm size, volume, and offering size, and by broker-dealer-only versus dually registered firms. *Approval consequence.* The Commission cannot rely on aggregate data to find the absence of unnecessary competitive burden.

VII.18. No Reasoned Rejection of Less Burdensome Alternatives

Type of effect: Applies across effect types. Supports Controlling Ground(s) 5.

The change. The proposal does not analyze materially less burdensome alternatives to the requirements it retains and creates.[69] *FINRA's position.* The proposal as revised reflects an appropriate balance. *Unresolved defect.* FINRA did not explain why the reliance safe harbors, source-reliance protection, small-firm tiering, and cure and materiality provisions identified here would fail to serve the proposal's purpose. *Statutory command.* § 15A(b)(9); and, for the Commission's order, the reasoned-decision standard. *Broker-dealer cost and issuer effect.* Avoidable costs persist where an adequate, less burdensome mechanism exists. *Less burdensome alternative.* Adopt the alternatives or state the reasoned basis for rejecting each. *Approval consequence.* The absence of reasoned alternatives analysis is central to statutory consistency and to the validity of the Commission's eventual order.

What evidence permits the Commission to find that the source-recordkeeping requirement and the replacement of express disclosures with a general standard reduce, rather than relocate, compliance burden, and do not fall disproportionately on small and low-volume members?

VIII. The Capital-Formation Transmission Mechanism

The issue FINRA declined to engage is a causal chain, and its steps are ordinary economics. Rule 2210 review, diligence, documentation, and interpretive-compliance costs — including the recordkeeping and general-standard costs this proposal creates for projections and targeted returns — increase the fixed cost of broker-dealer participation in an offering. Broker-dealers recover fixed costs through retainers, compliance deposits, commissions, indemnity demands, minimum offering sizes, delay, or refusal. A large offering spreads those fixed costs across a large capital raise; a small offering cannot. The result is fewer intermediaries willing to serve small offerings, greater concentration among those that remain, a higher minimum viable offering size, and reduced issuer access to intermediated distribution. That is the mechanism by

[68] 15 U.S.C. § 78o-3(b)(9); § 78c(f).

[69] 15 U.S.C. § 78o-3(b)(9); 5 U.S.C. § 706(2)(A) (standard governing the Commission's eventual order).

which a member-facing communications rule reaches issuers and capital formation, and it is the mechanism the Commission must evaluate under § 3(f).[70]

FINRA's record does not permit that evaluation, because FINRA developed no downstream evidence. To make its findings, the Commission needs a segmented record that FINRA must develop, including: broker-dealer minimum retainers and compliance deposits for projection-bearing offerings; commissions and indemnity terms; principal- and compliance-review hours attributable to projection communications and source recordkeeping; any filing or review fees tied to such communications; outside-counsel and technology costs; review and time-to-market delays; rates at which offerings using projections or targeted returns are declined or abandoned for lack of intermediary support; cost per offering and cost by firm size; and the resulting concentration among intermediaries serving small offerings.[71] Until that record exists, the Commission cannot determine whether the proposal promotes or impairs efficiency, competition, and capital formation, and cannot make the affirmative finding § 19(b)(2)(C) requires.

Fixed Costs and the Minimum Viable Offering Threshold

Supports Controlling Grounds 3 and 4.

Fixed compliance and recordkeeping costs do more than increase expense; they raise the minimum offering size at which broker-dealer participation becomes commercially rational. A fixed cost that a large offering absorbs across a large capital raise can exceed the entire economics of a small offering, so the same requirement that is trivial for a large distribution can make a small distribution uneconomic for the intermediary to serve. To determine whether that effect is material, the Commission needs evidence FINRA did not develop: the cost per projection-bearing communication; the cost per offering; the fixed versus variable components of that cost; the minimum broker-dealer retainer and any compliance deposit; the resulting minimum viable offering size; the number of offerings falling below that threshold; the rate at which such offerings are declined or abandoned for lack of intermediary support; and how each of these differs between large and small, and high- and low-volume, firms. Obelisk supplies no invented figures; it identifies the categories of evidence the record must contain before the Commission can find that the proposal does not raise the minimum viable size of a projection-bearing offering.

What evidence shows that the proposal will not raise the minimum viable size of a projection-bearing offering or reduce the availability of intermediary participation for small issuers?

IX. Regulation A: The Precise Theory

Obelisk states the Regulation A theory precisely, because an overstated version would be vulnerable and an accurate version is not. Regulation A permits direct issuer activity in defined

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[70] 15 U.S.C. § 78c(f); *see* Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); Obelisk Comment.

[71] Obelisk Comment (identifying the categories of segmented evidence required to evaluate the downstream effect). Aggregate filing counts and average estimates are insufficient where fixed costs and scale effects are the concern.

circumstances, and it does not categorically require a registered broker-dealer for every offering. But practical distribution, investor solicitation, platform access, subscription processing, and related intermediary functions frequently depend on broker-dealer participation. Rule 2210 therefore affects the price, availability, and minimum economic scale of that participation, and a change to the cost or legal certainty of projection communications can frustrate the capital-formation function of Regulation A without formally amending the exemption.[72]

The distinct components of a Regulation A offering must not be conflated, and Obelisk's comment did not conflate them. Qualification of a Form 1-A and the contents of the offering circular are governed by the Securities Act and the Commission's rules; testing-the-waters and Rule 255 solicitations of interest are separately governed; broker-dealer registration, FINRA Rule 5110's corporate-financing review, FINRA Rule 2210's communications standards, transfer-agent requirements, and state-law requirements are each distinct sources of obligation and cost. Obelisk's point concerns only the Rule 2210 communications component and its effect on the cost and availability of intermediary participation in projection-bearing Regulation A offerings — the precise component this proposal amends.[73]

X. Regulation S: The Precise Theory

The Regulation S point is equally precise. Regulation S provides a safe harbor for offshore offers and sales made in offshore transactions with no directed selling efforts in the United States.[74] Where a member participates in a compliant Regulation S offering, Rule 2210 applies to the member's communications, and the proposal's projection standards and recordkeeping requirement apply to controlled offshore communications no differently than to domestic ones. That raises the cost of the offshore channel and encourages members either to over-block global communications or to incur individualized legal review, deterring the cross-border distribution that small and dual-use issuers use to reach non-U.S. investors. A safe harbor for offshore projection communications that satisfy Regulation S and contain no directed selling efforts into the United States — maintained through reasonable geographic controls, with United-States-directed communications remaining fully covered — would remove the avoidable cost while preserving the domestic protections the proposal serves.[75]

XI. Materially Less Burdensome Alternatives

Throughout, Obelisk has identified concrete alternatives so that the Commission cannot regard the concern as abstract. Consolidated, they are: a reliance safe harbor permitting members to rely on projections and targeted returns drawn from Commission-filed or qualified disclosure absent actual knowledge or reason to know of material falsity; a source-reliance safe harbor for third-party projection data absent red flags, paired with the proposal's recordkeeping

[72] 17 C.F.R. § 230.255 (Regulation A solicitations of interest); 15 U.S.C. § 78c(f); Obelisk Comment. The argument is directed at de facto intermediary exclusion driven by cost, not at a nonexistent universal textual requirement of broker-dealer participation.

[73] 15 U.S.C. § 78c(f); § 78o-3(b)(6), (9).

[74] 17 C.F.R. §§ 230.901–905.

[75] 15 U.S.C. § 78o-3(b)(6), (9); § 78c(f); Obelisk Comment.

requirement; small-firm and low-volume tiering, including model procedures, reduced recordkeeping, and extended implementation; a codified issuer-versus-member adoption rule providing that participation in an offering does not by itself constitute adoption of the issuer's independent projection content; objective disclosure safe harbors that preserve the certainty the removed express disclosures provided; a Regulation A safe harbor for projections drawn from a qualified offering circular with required legends, and correspondence-level treatment of Rule 255 solicitations of interest; a Regulation S safe harbor for controlled offshore projection communications; and cure and materiality provisions distinguishing technical documentation defects from material investor harm.[76] Each preserves the investor-protection and market-integrity objectives the proposal serves while removing an avoidable, scale-insensitive cost. The Commission's reasoned-decision obligation requires that these alternatives be adopted or that a reasoned basis be stated for rejecting each; FINRA supplied neither.[77]

A Single Less-Burdensome Package the Commission Can Weigh

Supports Controlling Ground 5.

Rather than leave the Commission to assemble alternatives, Obelisk presents one principal less-burdensome package and asks a single question of it. The package has seven elements: (1) retain the source-recordkeeping requirement; (2) add a reliance safe harbor for projections and targeted returns drawn from Commission-filed or qualified disclosure absent actual knowledge or reason to know of material falsity; (3) permit reasonable reliance on qualified third-party information absent red flags; (4) apply an objective materiality threshold; (5) provide a cure period for technical documentation defects; (6) supply a model procedure and reduced recordkeeping for small and low-volume firms; and (7) state a clear boundary between issuer-created and member-adopted content. Each element preserves the investor-protection and market-integrity objectives the proposal serves while removing an avoidable, scale-insensitive cost. The decisive question follows: **What material investor-protection benefit would the proposal achieve that this less-burdensome package would not?** The Commission cannot make the finding § 19(b)(2)(C) requires without a reasoned answer to that question as to each element, and FINRA has supplied none. The broader set of alternatives catalogued earlier in this Part remains available; this package is the priority set the Commission should weigh first.

XII. The Federal Regulatory-Analysis Framework

Supports Controlling Grounds 2, 3, and 4.

Beyond the Exchange Act and the Administrative Procedure Act, a government-wide framework governs how a federal regulatory analysis is conducted. OMB Circular A-4 is the recognized standard for regulatory analysis.[78] Whether or not it binds this action directly, its categories —

[76] 15 U.S.C. § 78o-3(b)(6), (9); § 78c(f); 17 C.F.R. § 230.255; §§ 230.901–905; Obelisk Comment.

[77] 5 U.S.C. § 706(2)(A) (standard governing the Commission's eventual order); 15 U.S.C. § 78o-3(b)(9).

[78] OMB Circular A-4, Regulatory Analysis (Sept. 17, 2003); current status confirmed by OMB Memorandum M-25-15 (Feb. 12, 2025). Whether A-4 directly governs an independent agency's action is a threshold question, and recent executive action has purported to extend regulatory-review discipline to independent agencies, Exec.

baseline, incremental change, direct and indirect cost, incidence, uncertainty, alternatives, distributional effects, and net effect — are the framework against which the adequacy of the Commission's cost and competition analysis should be measured, and they track the efficiency, competition, and capital-formation inquiry § 3(f) already requires and the reasoned-decision inquiry the APA already requires.[79] On each category the record is silent as to small members and small offerings, and the incidence question — who legally bears the obligation and who economically bears the burden — is the core omission that Parts VII and VIII identify under the Exchange Act.

The new source-recordkeeping requirement may constitute or affect a collection of information under the Paperwork Reduction Act. To the extent it does, the Commission should identify the applicable OMB control number, a burden estimate that includes and is segmented for the new requirement, an analysis of duplication with existing books-and-records obligations, and a small-entity burden assessment.[80]

The Regulatory Flexibility Act's small-entity requirements are directed at the Commission's action, not at FINRA. To the extent they apply, their compliance requirements are judicially enforceable and carry the corrective remedies § 611 provides; independently, the small-entity categories the Act identifies — affected small entities, fixed and recordkeeping costs, and significant alternatives such as tiering, exemptions, and differing timetables — are relevant to §§ 15A(b)(9) and 3(f) regardless of the Act's procedural applicability to this action.[81]

The remaining federal instruments occupy defined places and apply only where their thresholds are met. OMB Circulars A-94 and A-123 and the current OMB memoranda supply methodological and internal-control benchmarks; OIRA review, the Congressional Review Act, the Government Accountability Office, the Inspector General, and government auditing standards are oversight mechanisms that operate only where jurisdiction exists; and the OMB Compliance Supplement is not implicated absent a federal-award nexus. Obelisk does not contend that any of these binds FINRA, invalidates the order, or creates a private right of action; it asks the Commission to state, where each applies, how its analysis satisfies it. Appendix H sets out each instrument, its current status and applicability category, its use in this filing, and the specific requests concerning OIRA review and Congressional Review Act coverage.

XIII. Judicial Standards Governing Any Commission Approval Order

The Commission's approval decision is not made in a vacuum; it is measured against a settled body of law governing how the Commission must decide whether to approve a self-regulatory organization's rule. Those standards are stated here because they define what a lawful approval order in this proceeding must contain, and because a controlling recent decision applied them to set aside the Commission's approval of a FINRA rule on facts materially like these.

Order No. 14215 (Feb. 18, 2025); OMB Memorandum M-25-20 (Mar. 26, 2025). Obelisk does not contend that A-4 independently invalidates the order or creates a private right of action; it is a methodological benchmark.

[79] 15 U.S.C. § 78c(f); 5 U.S.C. § 706(2)(A).

[80] 44 U.S.C. §§ 3506(c), 3507. Applicability is conditional on the requirement's constituting a covered collection; Obelisk does not assume it.

[81] 5 U.S.C. §§ 603–605, 611. To the extent applicable.

XIII.A. The Commission Must Independently Determine Exchange Act Consistency

The Commission may approve a proposed rule change only on its own affirmative finding of consistency with the Exchange Act; it may not defer that determination to the self-regulatory organization that proposed the rule.[82] The Commission's approval must rest on an adequate evidentiary and economic basis; an unsupported prediction, or the proponent's own assertion, does not supply that basis.[83] In a closely analogous case, the D.C. Circuit set aside the Commission's approval of a FINRA rule as arbitrary and capricious because the Commission failed to respond adequately to a commenter's concerns about the direct and indirect costs of FINRA's proposal.[84] That is the precise posture Obelisk raises: FINRA has declined to answer Obelisk's cost, competition, and capital-formation objections, and the Commission may not cure that gap by treating the proponent's silence as a substitute for its own analysis.

XIII.B. The Commission Must Engage in Reasoned Decision-Making and Address Material Comments

An approval order is arbitrary and capricious unless the Commission examined the relevant data and articulated a satisfactory explanation, including a rational connection between the facts found and the choice made.[85] An agency must reasonably address the significant and central objections placed before it; silence in the face of a central challenge can itself demonstrate that the action is arbitrary and capricious.[86] Because Obelisk's competition, fixed-cost, small-issuer, and capital-formation objections bear directly on the § 15A(b) and § 3(f) findings the Commission must make, they are the kind of central comments the Commission cannot leave unanswered on the theory that the proponent characterized them as outside scope.

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[82] 15 U.S.C. § 78s(b)(2)(C); *see* Susquehanna Int'l Grp., LLP v. SEC, 866 F.3d 442, 446–47 (D.C. Cir. 2017) (the Commission must make its own determination that a self-regulatory organization's proposal is consistent with the Exchange Act and may not simply defer to the organization's judgment).

[83] NetCoalition v. SEC, 615 F.3d 525, 539–44 (D.C. Cir. 2010) (setting aside the Commission's approval of a self-regulatory organization's market-data fee rule because the Commission's finding rested on an inadequate evidentiary record).

[84] Bloomberg L.P. v. SEC, 45 F.4th 462, 472–80 (D.C. Cir. 2022) (holding that the Commission's approval of FINRA's proposed reference-data service was arbitrary and capricious in that the Commission failed to respond to significant and relevant cost concerns a commenter raised, and remanding). *Bloomberg* is closely analogous: the reviewable action was the Commission's approval of a FINRA rule, and the defect was the Commission's failure to address a commenter's cost objections. The governing principle is not that a failure to answer any comment automatically requires set-aside; it is that a failure to address a material cost objection bearing on the required statutory findings may render an approval order arbitrary and capricious.

[85] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Obelisk does not contend that the Commission must respond to every comment; it contends that the Commission must reasonably address a material objection that bears on the statutory findings it must make.

[86] Ohio v. EPA, 603 U.S. 279, 292–94 (2024) (agency action was arbitrary where the agency failed to respond reasonably to a central objection raised in comments); Am. Mining Cong. v. EPA, 907 F.2d 1179, 1190–91 (D.C. Cir. 1990) (agency's failure to respond to specific, central challenges in the record is fatal, because points sufficiently central that agency silence renders the rulemaking arbitrary and capricious); Covad Commc'ns Co. v. FCC, 450 F.3d 528, 550 (D.C. Cir. 2006) (an agency must respond in a reasoned manner to comments that raise significant problems).

XIII.C. Economic Conclusions Require Evidentiary Support

The Commission's obligation to consider efficiency, competition, and capital formation is not satisfied by conclusory assertion; the Commission must reasonably assess the available evidence, acknowledge uncertainty, and explain the basis for its conclusions.[87] A reviewing court has vacated a Commission rule for arbitrary treatment of the same efficiency, competition, and capital-formation inquiry, faulting the Commission for failing to make any real finding on the existing level of competition affected by the rule.[88] And a reviewing court has vacated a Commission rule for failing to consider the costs the rule imposed and the alternatives available.[89] These authorities define the evidentiary showing the Commission must have before it, and the record FINRA supplied does not contain it.

XIII.D. A Change From Specific Rules to a General Standard Must Be Explained

Where an agency changes course — here, by replacing express projection disclosures and an express reasonable-basis requirement with reliance on a general standard — it must display awareness that it is changing position and supply a reasoned explanation, and a more detailed justification is required where the change rests on factual findings or disregards reliance interests that underlay the prior approach.[90] A reasoned decision must also consider the significant alternatives to the course chosen and the reliance interests the change affects.[91] The Commission cannot find this change consistent with the Exchange Act without the analysis of its two-sided burden and investor-protection effects that Part VII identifies and that FINRA did not perform.

XIII.E. The Commission's Order Must Stand on the Grounds It States

An approval order must be judged on the grounds the Commission itself invokes; a rationale that the Commission did not provide cannot be supplied later by counsel to sustain the order.[92] That principle has a concrete consequence here: if the Commission approves this proposal, the

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[87] 15 U.S.C. §§ 78c(f), 78w(a)(2); Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (vacating a Commission rule where the Commission failed adequately to assess the rule's economic effects, including on efficiency, competition, and capital formation, and relied on unsupported assumptions). Obelisk does not contend that every unquantified cost is unlawful; it contends that the Commission must reasonably assess the evidence and explain its conclusions.

[88] Am. Equity Inv. Life Ins. Co. v. SEC, 613 F.3d 166, 177–79 (D.C. Cir. 2010) (vacating a Commission rule because its analysis of efficiency, competition, and capital formation was arbitrary and capricious; the Commission failed to determine the baseline level of competition its rule would affect). Although *American Equity* arose under Securities Act § 2(b), that provision is the analogue of Exchange Act § 3(f), and the analytical requirement is the same.

[89] Chamber of Commerce v. SEC, 412 F.3d 133, 143–44 (D.C. Cir. 2005) (vacating a Commission rule for failure to consider the costs imposed and to consider a proposed alternative). The proposal here supplies no such cost or alternatives analysis directed at small members or small issuers.

[90] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515–16 (2009); Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221–22 (2016) (an unexplained change in an agency's position is arbitrary and capricious). The proposal replaces bright-line projection disclosures with a general standard without analyzing the compliance uncertainty and comparability effects the change creates.

[91] Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 30, 33 (2020) (agency action was arbitrary and capricious where the agency failed to consider important alternatives and the reliance interests at stake).

[92] SEC v. Chenery Corp., 318 U.S. 80, 87–95 (1943) (an administrative order must be judged on the basis the agency itself articulated, and a reviewing court may not sustain it on grounds the agency did not invoke).

approval order itself must state the statutory and evidentiary basis for resolving Obelisk's preserved objections. FINRA's characterization cannot be borrowed as that basis, and post hoc explanation cannot cure an order that fails to resolve the objections when it issues.

XIII.F. Statutory Interpretation Remains Subject to Independent Judicial Judgment

A reviewing court exercises independent judgment in determining the meaning of the statutes that govern the Commission's authority, and does not defer to an agency's interpretation merely because a provision is ambiguous.[93] The consequence for this proceeding is narrow but firm: FINRA's characterization of which statutes are relevant, and any Commission interpretation that treats general investor-protection language as authority to disregard the Act's competition, market-access, anti-discrimination, and capital-formation commands, would remain subject to independent judicial judgment.

XIV. Judicial Review, Preservation, and Consequences of an Unsupported Approval Order

Obelisk states the statutory consequences of an unsupported approval order calmly and precisely. The point is not to threaten litigation; it is to identify, now, the review standards the Commission must satisfy before it issues a final order, and to preserve the issues so that FINRA and the Commission understand they are not resolved by nonresponse.

XIV.A. The Reviewable Governmental Action and the Preservation Rule

FINRA is the proponent of the rule; the Commission's eventual approval order is the governmental final action ordinarily subject to judicial review. A person aggrieved by a final Commission order may seek review in an appropriate court of appeals, generally within sixty days, and the court may affirm, modify, enforce, or set aside the order in whole or in part.[94] Ordinarily, no objection may be considered by the reviewing court unless it was urged before the Commission, or unless there was reasonable ground for failing to do so.[95] Obelisk therefore expressly raises and preserves, for Commission consideration and any subsequent judicial review, each statutory, evidentiary, procedural, competition, capital-formation, small-entity, Administrative Procedure Act, and Regulatory Flexibility Act objection stated in its May 27 comment, its sworn administrative record, and this comment.

XIV.B. "Set Aside" and the Available Remedy Range

An approval order entered without the findings, evidence, and reasoned analysis the Exchange Act and administrative law require would be vulnerable to being set aside, in whole or in part,

[93] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024). Obelisk does not contend that this principle resolves any interpretive question automatically in its favor; the point is that neither FINRA's nor the Commission's view of what §§ 3(f), 15A(b), and 19(b) require, or of which authorities are relevant, is insulated from independent judicial review.

[94] 15 U.S.C. § 78y(a)(1)–(3). The reviewable action is the Commission's order, not FINRA's response to comments; Obelisk does not contend that a court reviews FINRA's letter directly.

[95] 15 U.S.C. § 78y(c)(1).

and remanded for further proceedings.[96] Setting aside the Commission's order would remove the governmental approval on which the FINRA rule change depends; it does not operate directly on FINRA. The remedy is not all-or-nothing. A reviewing court weighing vacatur considers the seriousness of the order's deficiencies and the likelihood the agency can justify the same result on remand, together with the disruptive consequences of vacatur, and it may remand without vacating where those factors so indicate.[97] The Commission should understand that the realistic consequences of an unsupported order include full set-aside, partial set-aside of a discrete provision such as the source-recordkeeping requirement, remand with or without vacatur, and supplemental proceedings — a range of outcomes, each of which is avoidable by resolving the open issues now.

XIV.C. The Grounds Under the Administrative Procedure Act

The Commission's order must satisfy the Administrative Procedure Act as final agency action; FINRA is not itself subject to the Act.[98] Obelisk identifies each potentially applicable ground and states it without overreach.

Arbitrary or capricious — § 706(2)(A). This is the principal ground. An order is arbitrary and capricious if the Commission failed to consider an important aspect of the problem, failed to answer a significant comment, relied on unsupported assumptions, failed to examine the relevant data, treated the proponent's characterization as a substitute for its own analysis, or failed to consider reasonable alternatives.[99]

In excess of statutory authority — § 706(2)(C). An order exceeds statutory authority if the Commission approves a rule inconsistent with § 15A(b), fails to enforce the competition limitation of § 15A(b)(9), approves without the affirmative consistency finding § 19(b)(2)(C) requires, disregards §§ 3(f) and 23(a)(2), or rests on a reading of the Exchange Act broader than its text permits.[100]

Without observance of procedure required by law — § 706(2)(D). An order is procedurally defective if the Commission fails to conduct the § 19(b) inquiry the statute requires, fails to maintain a decisional record adequate for meaningful review, relies on material not properly in

[96] 15 U.S.C. § 78y(a)(3) (the reviewing court may set aside a Commission order in whole or in part). Obelisk does not contend that a set-aside is automatic; it identifies the vulnerability that an unsupported order would carry.

[97] Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n, 988 F.2d 146, 150–51 (D.C. Cir. 1993) (identifying the two factors that govern the choice between vacatur and remand without vacatur). In *Bloomberg*, the court applied those factors and remanded the Commission's approval of a FINRA rule without vacating it. Bloomberg L.P. v. SEC, 45 F.4th 462, 480 (D.C. Cir. 2022).

[98] 5 U.S.C. § 706; *see* 15 U.S.C. § 78y(a). Obelisk directs each ground below to the Commission's eventual order, not to FINRA.

[99] 5 U.S.C. § 706(2)(A); *see* State Farm, 463 U.S. at 43; Ohio v. EPA, 603 U.S. at 292–94; Bloomberg, 45 F.4th at 472–80. The Commission cannot rationally find statutory consistency by treating FINRA's express nonresponse as if it resolved the unanswered competition, cost, small-issuer, and capital-formation issues.

[100] 5 U.S.C. § 706(2)(C); 15 U.S.C. §§ 78o-3(b), (b)(9); 78s(b)(2)(C); 78c(f); 78w(a)(2); *see* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024). Treating general investor-protection objectives as authority to disregard the Act's competition, market-access, anti-discrimination, and capital-formation commands would be vulnerable under this ground.

the record, or fails to address properly preserved material objections where the statute requires a reasoned basis for approval.[101]

Unsupported by substantial evidence — § 706(2)(E). This standard applies where a matter is reviewed on the record of an agency hearing provided by statute, and its text is narrower than ordinary arbitrary-and-capricious review. To the extent it applies, the Commission's material factual findings must be supported by the record; otherwise, the same evidentiary deficiency remains independently relevant under § 706(2)(A), the Exchange Act, and § 25.[102]

Contrary to constitutional right — § 706(2)(B); unwarranted by the facts on de novo review — § 706(2)(F). Obelisk does not assert a constitutional violation or a de novo fact-review claim on this record, and it declines to dilute its statutory case by manufacturing one. Obelisk preserves all applicable grounds under 5 U.S.C. § 706(2) without contending that either subsection supplies the governing standard here.[103]

XIV.D. Whole-Record Review and Prejudicial Error

Judicial review is conducted on the whole record, or the parts of it cited by a party, not merely the portions the proponent chose to answer. Obelisk therefore incorporates and preserves its May 27 comment, its sworn administrative record, its exhibits, and this comment as part of the decisional record.[104] Obelisk does not treat every procedural imperfection as automatically fatal; the party asserting error ordinarily must show prejudice.[105] For each defect Obelisk identifies, the prejudice is concrete: an unanswered material issue leaves the Commission without a record basis for a required finding; an unexamined cost falls disproportionately on small members and small issuers whose interests then go unrepresented in the analysis; and an unconsidered less-burdensome alternative leaves an avoidable burden in place. Those are not abstract errors; each removes a predicate the Commission needs for its affirmative finding.

XIV.E. Action Unlawfully Withheld or Unreasonably Delayed

Obelisk does not contend that the Commission has unlawfully withheld or unreasonably delayed a required action, because the Commission is actively considering the proposal. Obelisk preserves the point only to the extent any legally required action is later withheld or unreasonably delayed.[106]

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[101] 5 U.S.C. § 706(2)(D); 15 U.S.C. § 78s(b). Obelisk's contention is not merely that FINRA declined to answer; it is that an approval order entered without the Commission independently addressing material issues properly placed before it during the Order-Instituting-Proceedings comment period would be vulnerable for failure to observe the procedure governing the approval determination.

[102] 5 U.S.C. § 706(2)(E). Obelisk does not contend that this standard governs every aspect of an informal SRO-approval proceeding.

[103] 5 U.S.C. § 706(2)(B), (F).

[104] 5 U.S.C. § 706 (directing review of the whole record). Obelisk preserves the complete factual, statutory, and alternative-remedy record precisely because review concerns the whole record before the Commission.

[105] Shinseki v. Sanders, 556 U.S. 396, 409–11 (2009) (the party seeking reversal of an agency determination for procedural error normally must show that the error was prejudicial), subject to context-specific administrative-law rules; *see* Sugar Cane Growers Coop. of Fla. v. Veneman, 289 F.3d 89, 94–96 (D.C. Cir. 2002) (a complete failure to afford required notice and comment can itself be prejudicial).

[106] 5 U.S.C. § 706(1).

XIV.F. Regulatory Flexibility Act Remedies Where Applicable

The Regulatory Flexibility Act's small-entity requirements are directed at the Commission's governmental action, not at FINRA. To the extent the Act applies to the Commission's action here, an adversely affected small entity may obtain judicial review of the Commission's compliance with specified provisions, and a reviewing court may order the Commission to take corrective action, including remanding the rule and deferring enforcement of the rule against small entities unless the court finds that continued enforcement is in the public interest.[107] Where the Act applies, the regulatory flexibility analysis forms part of the entire record of the Commission's action on review.[108] These are the concrete remedies the small-entity framework carries where it applies, and they reinforce why the segmented small-member and small-issuer analysis this proposal lacks is not optional.

XIV.G. Stay Authority

Judicial review of a Commission order does not automatically stay the order, but the Commission and the reviewing court possess specified authority to stay the order or otherwise preserve rights pending review.[109] Obelisk does not request a stay in the present posture; it preserves the right to seek one from the Commission or a reviewing court should the procedural posture make it necessary.

XIV.H. The Commission's Independent Authority Under Section 19(c)

If the Commission concludes that FINRA's proposed amendment does not adequately resolve the structural burdens Obelisk identifies, the Commission is not powerless. Through the procedures Congress prescribed, the Commission possesses independent authority to abrogate, add to, or delete from the rules of a self-regulatory organization where necessary or appropriate to ensure fair administration, to conform the organization's rules to the Exchange Act, or to further the Act's purposes.[110]

XIV.I. Preservation

Obelisk expressly preserves for Commission consideration and, if necessary, judicial review every objection stated in its May 27 comment, its sworn administrative record, its exhibits, and this comment, including objections under Exchange Act §§ 3(f), 15A(b), 19(b), 23(a)(2), and 25; the Administrative Procedure Act; the Regulatory Flexibility Act to the extent applicable; and all other statutory and constitutional provisions properly presented by the record.[111] This preservation is not a prediction that judicial review will be necessary. It identifies the issues the

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[107] 5 U.S.C. § 611(a). Obelisk does not contend that the Regulatory Flexibility Act governs FINRA directly, or that every procedural provision of the Act necessarily applies to the Commission's approval of a self-regulatory organization's rule filing; the point is that, to the extent the Act applies, its compliance requirements are judicially enforceable and carry the identified remedies.

[108] 5 U.S.C. § 611(b).

[109] 15 U.S.C. § 78y(c)(2).

[110] 15 U.S.C. § 78s(c). Obelisk does not contend that § 19(c) displaces the procedural requirements governing its exercise, or that it is the immediate route in the pending § 19(b) proceeding; Obelisk identifies it to show that the Commission has an institutional means to address the identified burdens if the proposal as filed does not.

[111] 15 U.S.C. §§ 78c(f), 78o-3(b), 78s(b), 78w(a)(2), 78y(c)(1); 5 U.S.C. §§ 603–605, 611, 706.

Commission must resolve before issuing a final order, and it makes clear that FINRA's nonresponse does not waive, resolve, or narrow any of them. The correspondence between each identified defect, its governing authority, the prejudice it works, the correction required, and the potential review consequence is set out in Appendix F.

XV. Findings the Commission Would Need to Make Before Approval

The most useful way to see what FINRA's nonresponse costs the Commission is to state the findings a lawful approval order would have to support, and then to note whether the present record supports them. For each finding below, Obelisk states the record status as: supported, partially supported, not supported on the present record, or requiring supplementation. Obelisk's assessment is that the record does not presently support the findings the Exchange Act requires.

1. The revised projection standards protect investors within the meaning of § 15A(b)(6). *Partially supported; requires supplementation* — the record addresses the burden the removed requirements imposed on members but does not tie the changes to evidence of investor harm, incidence, or severity, or distinguish technical from material concerns.[112]

2. Replacing the express projection disclosures and the express reasonable-basis requirement with a general standard does not create offsetting compliance uncertainty exceeding the burden removed. *Not supported on the present record* — FINRA performed no analysis of the two-sided effect.[113]

3. The new source-recordkeeping requirement does not impose a burden on competition that is unnecessary or inappropriate. *Not supported on the present record* — the record contains no fixed-cost or firm-size segmentation.[114]

4. The proposal's fixed costs do not disproportionately disadvantage small and low-volume members. *Not supported on the present record; requires supplementation* — the record relies on aggregate estimates that conceal fixed-cost incidence.[115]

5. Downstream access for small issuers to intermediated distribution is not materially impaired. *Not supported on the present record* — FINRA's analysis stops at the member and does not reach issuer access, offering viability, or intermediary concentration.[116]

6. Regulation A and Regulation S distribution channels are not materially burdened by the projection standards as applied to member communications in those offerings. *Not supported on the present record* — the record contains no Regulation A or Regulation S analysis.[117]

[112] 15 U.S.C. § 78o-3(b)(6).

[113] 15 U.S.C. § 78o-3(b)(6), (8); *see* Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016).

[114] 15 U.S.C. § 78o-3(b)(9).

[115] 15 U.S.C. § 78o-3(b)(9); *see* Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).

[116] 15 U.S.C. § 78c(f); *see* Am. Equity Inv. Life Ins. Co. v. SEC, 613 F.3d 166, 177–79 (D.C. Cir. 2010).

[117] 15 U.S.C. § 78c(f); 17 C.F.R. § 230.255; §§ 230.901–905.

7. Issuer-created projection content is governed by a sufficiently clear adoption boundary. *Not supported on the present record* — the proposal supplies no boundary between issuer-created and member-adopted content.[118]

8. Reasonable reliance on projections drawn from qualified, filed, or third-party sources is adequately addressed. *Not supported on the present record* — the recordkeeping requirement documents a source but supplies no reliance protection.[119]

9. Materially less burdensome alternatives would not adequately serve the proposal's purpose. *Not supported on the present record* — FINRA supplied no reasoned analysis of the alternatives Obelisk identified.[120]

10. The proposal is consistent with §§ 15A(b)(6) and 15A(b)(9), promotes efficiency, competition, and capital formation under § 3(f), does not impose an unnecessary or inappropriate burden on competition under § 23(a)(2), and can therefore be approved under § 19(b)(2)(C). *Not supported on the present record* — this ultimate finding depends on the specific findings above, which the record does not support.[121]

XVI. Requested Relief and Remedy Ladder

XVI.A. A Graduated Remedy, Addressed to the Actor Empowered to Grant It

Obelisk does not demand a single all-or-nothing outcome, and it directs each request to the institution legally empowered to act on it.

Of the Office of the Secretary, Obelisk requests only that this comment be accepted, posted, and preserved on the File No. SR-FINRA-2026-004 docket; the Secretary receives and maintains the record and does not decide the merits.

Of the Commission — the body that makes the operative decision and owns the reasoning in any final order — Obelisk requests, in order of preference: first, that it disapprove the proposal if it cannot make the affirmative findings § 19(b)(2)(C) requires on the present record; second, and alternatively, that it require FINRA to file a provision-specific supplemental response supplying the segmented competition, fixed-cost, small-issuer, and capital-formation analysis the record lacks; third, that it reopen or extend the comment period after any such supplementation so that the public can address the new material; fourth, that it condition or narrow any approval through the safe harbors, reliance provisions, small-firm tiering, and cure and materiality provisions identified in Part XI, approving only what the record supports; and fifth, that it expressly reserve the unresolved issues and decline to treat FINRA's nonresponse as a rebuttal or as affirmative evidence of consistency.

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[118] 15 U.S.C. § 78o-3(b)(6), (8).

[119] 15 U.S.C. § 78o-3(b)(6), (9).

[120] 15 U.S.C. § 78o-3(b)(9); 5 U.S.C. § 706(2)(A).

[121] 15 U.S.C. §§ 78o-3(b)(6), (9); 78c(f); 78w(a)(2); 78s(b)(2)(C). Section 15A(b)(5) is implicated only if the Commission's approval results in a dues, fee, or charge imposed by FINRA or through its facilities; absent such a charge it is not part of this finding.

Of FINRA, the proponent, the requested action is to supply the provision-specific analysis, and any amendment, necessary to answer Obelisk's material objections.

Obelisk directs no request in this proceeding to a reviewing court, to OMB or OIRA, to the Government Accountability Office, or to any inspector general; it identifies their functions in Part XII, Part IV.E, and Appendix H only to show where authority lies, and it preserves the objections stated here for any later forum. In all events, the Commission should preserve Obelisk's objections for any final order, so that the record reflects that they were raised and not resolved by silence.

XVI.B. Specific Requests

For the reasons stated, Obelisk respectfully requests that the Commission:

1. accept and post this comment in File No. SR-FINRA-2026-004;

2. recognize that FINRA acknowledged but did not substantively rebut Obelisk's material statutory, competition, capital-formation, small-issuer, and cumulative-burden concerns, and did not evaluate Obelisk's sworn administrative record;

3. require FINRA to identify, issue by issue, which of Obelisk's concerns it regards as answered, unanswered, outside the scope of the proposal, immaterial, or governed by an authority FINRA contends is inapplicable;

4. require FINRA to identify each statute or rule it contends is inapplicable and to state whether its objection concerns jurisdiction, statutory text, procedural posture, direct applicability to FINRA, or relevance to the Commission's decision;

5. require a provision-specific competition analysis under Exchange Act § 15A(b)(9), including the fixed-cost effects of the recordkeeping and general-standard requirements on small and low-volume members;

6. require analysis of the downstream effects of the proposal on small issuers and on Regulation A and Regulation S capital formation under Exchange Act § 3(f), including the segmented evidence identified in Part VIII;

7. require consideration of the materially less burdensome alternatives identified in Part XI, or a reasoned basis for rejecting each;

8. require segmentation of the economic analysis by firm size, communication volume, and offering size, and as between broker-dealer-only and dually registered firms; and

9. decline to approve the proposal unless and until the Commission independently resolves the unanswered issues and can make the affirmative findings required by Exchange Act § 19(b)(2)(C), consistent with its obligations under §§ 15A(b)(6), 15A(b)(9), 3(f), and 23(a)(2).

Obelisk directs this submission to the Commission through the Secretary and the File No. SR-FINRA-2026-004 comment record. The issues Obelisk raises are also squarely within the interest of the Commission's Office of the Advocate for Small Business Capital Formation, and Obelisk respectfully suggests that the office's perspective would assist the Commission's capital-formation analysis.

XVII. Conclusion

FINRA has authority to protect investors from false and misleading member communications, including communications that contain projections of performance and targeted returns. It does not have a license to leave the competition, capital-formation, small-issuer, and cumulative-burden effects of its proposal unexamined, and it cannot discharge the Commission's statutory obligations by acknowledging a comment and declining to answer it. FINRA's decision to acknowledge but not substantively answer Obelisk's Order-Instituting-Proceedings submission leaves material issues unresolved — issues that concern not only the burden imposed directly on broker-dealers, but the downstream price, availability, and minimum economic scale of intermediary participation in small-issuer capital formation. The Commission must independently determine whether the proposal satisfies §§ 15A(b)(6) and 15A(b)(9), whether it promotes efficiency, competition, and capital formation under § 3(f), and whether the record permits the affirmative consistency finding required by § 19(b)(2)(C).[122] Unless those questions are answered on a provision-specific and evidentiary basis, the Commission cannot lawfully approve the proposal. Appendix J states, issue by issue, the finding each such answer must support, the evidence the record needs, and the consequence if the finding is unsupported.

Respectfully submitted,

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SEC EDGAR CIK 0002090527

Dated: July 22, 2026

Appendix A. FINRA's Characterizations Compared With the Actual Record

Each row states a characterization FINRA placed before the Commission, its source, where Obelisk's comment addressed the matter and the provision implicated, the matter FINRA left unanswered, and the determination the Commission must make. The table is the direct answer to FINRA's contention that Obelisk was nonspecific or outside scope. (Exact page pinpoints to the May 27 comment can be added from that document; the FINRA sources are cited by page and footnote.)

[122] 15 U.S.C. §§ 78o-3(b)(6), (9); 78c(f); 78s(b)(2)(C).

FINRA characterization (source)	Where Obelisk addressed it, and the provision	Matter FINRA left unanswered	Commission determination required
“Did not address the substance” (Response 3–4 & n.9)	The reasonable-basis, recordkeeping, and projection-disclosure changes, tied to downstream small-issuer effects; Rule 2210(d)(1)(A), (B), (F)	Whether the substance was in fact considered; no provision-by-provision analysis	Whether Obelisk’s objections are resolved before a § 19(b)(2)(C) finding
“Outside the proposal’s scope” (Response 3–4 & n.9)	The same amended provisions, tied to §§ 15A(b), 3(f), 19(b)(2)(C)	Which parts, and that relevance is the Commission’s to decide, not the proponent’s	Whether Obelisk’s evidence is relevant to the statutory findings
“Cited inapplicable authorities” (Response 3–4 & n.9)	§§ 15A(b)(6), (9); 3(f); 23(a)(2); 19(b)(2)(C) — the provisions governing SRO-rule approval	Which authorities, and the legal basis; FINRA identified none	Whether each cited authority governs the approval inquiry
“Did not identify the provisions” (Response 3–4 & n.9)	The amended content standards by provision, confirmed by the proposal’s own text; Rule 2210(d)(1)(A), (B), (F)	How the characterization stands when the text and the comment identify the same provisions	Whether the characterization is accurate; it is contradicted by the record
“Letter is FINRA’s rebuttal” (Response 2 & n.6; Amendment 4 & n.6)	Obelisk is one of the three Order-Instituting-Proceedings comments the Response purports to rebut	How a filing that declines to respond functions as a rebuttal	Whether the Response answers Obelisk; where it does not, the issues remain

FINRA characterization (source)	Where Obelisk addressed it, and the provision	Matter FINRA left unanswered	Commission determination required
"Declines to respond" (Response 3–4 & n.9)	The entire comment and sworn record — competition, fixed-cost, small-issuer, capital-formation, and alternatives	The merits of every material objection	Each objection independently resolved before the § 19(b)(2)(C) finding

Appendix B. Provision-to-Statute Decision Matrix

Proposal provision	Principal statutory requirement	Unresolved record issue	Required Commission determination
Removal of "reasons a projection may differ" disclosure	§ 15A(b)(6); § 3(f)	Comparability and uncertainty effects, and downstream cost, unassessed	Consistency with investor protection on evidence of harm
Removal of "net of fees and expenses" disclosure	§ 15A(b)(6)	Investor-protection basis for removal unshown	Finding that removal is consistent with investor protection
General standard replacing bright-line disclosures	§ 15A(b)(6), (9)	Certainty lost versus burden removed unanalyzed	Finding of net burden reduction, not relocation
New source-recordkeeping requirement	§ 15A(b)(9); § 3(f)	Fixed-cost incidence by firm and offering size unquantified	Finding of no unnecessary competitive burden or unfair discrimination
Reasonable-basis removal, small-issuer effect	§ 15A(b)(9); § 3(f)	Downstream small-issuer effect unassessed	Capital-formation finding under § 3(f)

Proposal provision	Principal statutory requirement	Unresolved record issue	Required Commission determination
No reliance safe harbor for filed or qualified disclosure	§ 15A(b)(6), (9)	Necessity of duplicative verification unshown	Finding that reliance would not protect investors
No issuer-created / member-adopted boundary	§ 15A(b)(6)	Adoption boundary undefined	Finding that content is governed by a clear boundary
No small-firm or low-volume compliance pathway	§ 15A(b)(6), (9)	Small-firm incidence unaddressed	No-unfair-discri mination finding
Regulation A and Regulation S projection communications	§ 3(f); § 15A(b)(9)	Cross-channel effects unassessed	Capital-formation finding for those channels
Cumulative burden with the existing regime	§ 15A(b)(9); § 3(f)	Interaction with existing requirements unassessed	Finding on cumulative, not isolated, effect

Appendix C. Fixed-Cost and Capital-Formation Pressure Matrix

Provision or change	Competition / capital-formation concern	Requested relief	Consequence for the § 19(b)(2)(C) finding
Source-recordkee ping requirement	Regressive fixed cost on low-volume firms (§ 15A(b)(9))	Scaled recordkeeping; reliance log	No finding without size segmentation
General standard for projections	Interpretive uncertainty raises defensive cost (§ 15A(b)(9))	Objective disclosure safe harbors	No finding without two-sided analysis

Provision or change	Competition / capital-formation concern	Requested relief	Consequence for the § 19(b)(2)(C) finding
Reasonable-basis removal	Downstream small-issuer burden (§ 3(f))	Reliance safe harbor; tiering	No capital-formation finding on member-only record
Uniform application to small firms	Distribution concentrates among large firms (§ 15A(b)(9))	Model procedures; reduced recordkeeping	No no-unfair-discrimination finding
Fixed cost and offering scale	Raises minimum viable offering size (§ 3(f))	Scaling and safe harbors	No finding without threshold evidence

Provision or change	Competition / capital-formation concern	Requested relief	Consequence for the § 19(b)(2)(C) finding
Third-party source reliance	Verification-cost duplication (§ 15A(b)(9))	Source-reliance safe harbor	No finding of necessity
Regulation A projection communications	Cost of intermediated distribution (§ 3(f))	Regulation A offering-circular safe harbor	No Regulation A capital-formation finding
Regulation S offshore projections	Cross-border channel cost (§ 3(f); § 15A(b)(9))	Regulation S offshore safe harbor	No cross-border finding
Cumulative burden	Interaction with the existing regime (§ 15A(b)(9); § 3(f))	Evaluate on a cumulative baseline	Cannot assess effects in isolation
Aggregate cost data	Conceals fixed-cost incidence (§ 15A(b)(9); § 3(f))	Segment by size, volume, and offering	Cannot rely on averages

Appendix D. Commenter-Treatment Comparison

The record is asymmetrical: FINRA substantively engaged burden and operational-complexity arguments from incumbent industry commenters and amended the proposal in response, while it declined to address Obelisk's downstream small-issuer analysis. Obelisk alleges no motive; it states the record disparity.

Commenter	Issue raised and FINRA's response	Comparable Obelisk issue	FINRA treatment of Obelisk
Incumbent industry commenters	Reasonable-basis requirement duplicative, burdensome, or unclear; FINRA removed the express requirement and added source recordkeeping (Amendment, at 5–7)	Residual general-standard-plus-recordkeeping burden on small offerings	Declined to respond
Incumbent industry commenters	Express projection-difference and net-of-fees disclosures burdensome; FINRA removed them and relies on the general standard (Amendment, at 7–8)	Comparability and uncertainty effects, and downstream cost, of the general standard	Declined to respond
Incumbent industry commenters	Operational complexity and duplicated diligence; FINRA engaged the arguments and revised the proposal	Fixed-cost incidence on small and low-volume firms and small offerings	Declined to respond

Appendix E. Case-to-Defect Matrix

Each authority is verified and used only for the proposition it supports. The most directly analogous authority — the Commission's approval of a FINRA rule set aside for failure to answer a commenter's cost concerns — appears first.

Case	Controlling principle	Application here	Remedy implication
Bloomberg L.P. v. SEC, 45 F.4th 462 (D.C. Cir. 2022)	Commission must address a commenter's cost objections	FINRA-rule approval set aside for a closely analogous failure to answer cost concerns	Set-aside; remand
Susquehanna Int'l Grp. v. SEC, 866 F.3d 442 (D.C. Cir. 2017)	Commission must independently determine consistency	Commission may not adopt the proponent's frame	Approval cannot rest on deference
NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010)	SRO approval needs an evidentiary basis	Characterization is not evidence	Set-aside; remand
Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29 (1983)	Reasoned examination; rational connection	Small-firm and capital-formation evidence unaddressed	Set-aside; remand
Ohio v. EPA, 603 U.S. 279 (2024); Am. Mining Cong. v. EPA, 907 F.2d 1179 (D.C. Cir. 1990)	Must address central objections	Silence on a central cost objection cannot stand	Set-aside; remand
Bus. Roundtable v. SEC, 647 F.3d 1144 (D.C. Cir. 2011); Am. Equity v. SEC,	Adequate economic analysis	No fixed-cost or issuer-level analysis	Vacatur under APA and Exchange Act

Case	Controlling principle	Application here	Remedy implication
613 F.3d 166 (D.C. Cir. 2010)			
FCC v. Fox, 556 U.S. 502 (2009); Encino Motorcars v. Navarro, 579 U.S. 211 (2016)	Explain a change in approach	Unexplained shift to a general standard	Set-aside; remand
SEC v. Chenery Corp. (Chenery I), 318 U.S. 80 (1943)	Order judged on the grounds stated	The order must itself resolve objections	Counsel cannot cure later
Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024)	Independent statutory judgment	Any interpretation of authority remains reviewable	§ 706(2)(C) vulnerability
Allied-Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993)	Vacatur versus remand factors	Court weighs seriousness and disruption	Vacatur or remand without vacatur

Appendix F. Error, Prejudice, Correction, and Review Consequence

Defect and governing authority	Prejudice	Required correction	Potential review consequence
Material comment unanswered (§ 706(2)(A); § 19(b)(2)(C))	No record basis for a required finding	Commission analysis or supplementation	Set-aside; remand
Statutory limit disregarded (§ 706(2)(C); § 15A(b)(9))	Approval beyond permitted bounds	Provision-specific finding	Partial or full set-aside
Required procedure omitted (§	Meaningful review impaired	Reopen or supplement the proceeding	Remand

Defect and governing authority	Prejudice	Required correction	Potential review consequence
706(2)(D); § 19(b))			
Small-entity analysis deficient, where the RFA applies (5 U.S.C. §§ 604, 605(b), 611)	Alternatives and burden omitted	Corrective analysis	Remand; deferred enforcement
Unsupported factual finding (§ 706(2)(A), and (E) where applicable)	Finding lacks record support	Develop the evidence	Set-aside; remand

Appendix G. Incorporated Record and Exhibit List

Items 1 and 2 are Obelisk's own filings in this docket, incorporated by reference; items 3 through 5 are FINRA and Commission documents already in the docket; item 6 is this comment.

1. Comment of Obelisk Tech Systems, Inc., File No. SR-FINRA-2026-004 (May 27, 2026).

2. Master Administrative Record and Sworn Declaration accompanying the Obelisk Comment, File No. SR-FINRA-2026-004 (May 27, 2026).

3. FINRA, Response to Comments, File No. SR-FINRA-2026-004 (June 30, 2026).

4. FINRA, Partial Amendment No. 1, File No. SR-FINRA-2026-004 (June 30, 2026).

5. Order Instituting Proceedings, Securities Exchange Act Release No. 105524, 91 FR 30750 (May 26, 2026), File No. SR-FINRA-2026-004.

6. This comment of Obelisk Tech Systems, Inc. (July 22, 2026).

Appendix H. Federal Regulatory-Analysis and Oversight Instruments

This appendix states the federal regulatory-analysis and oversight instruments referenced in Part XII, each classified by whether it is directly applicable, conditional on a threshold, a methodological benchmark, an external-oversight or audit mechanism, or excluded. None is asserted to bind FINRA, to invalidate the Commission's order, or to create a private right of action.

OMB Circular A-94 — Long-Term Cost-Benefit and Discounting (conditional)

Circular A-94 supplies the federal methodology for benefit-cost analysis and discounting, with rates updated for 2026.[123] It applies only where an analysis projects or discounts costs or benefits over time. To the extent FINRA or the Commission claims long-run benefits from the amendment, that claim triggers A-94's requirements — an analysis period, separation of one-time from recurring costs, a disclosed discount rate, and sensitivity analysis — none of which the record supplies.

OMB Circular A-123 — Internal Control and Data Reliability (benchmark)

Circular A-123 states the federal internal-control standard for the integrity of the information on which decisions rest.[124] It is not a merits standard for approving a self-regulatory organization's rule; its principles are a benchmark framing the data-reliability questions the Commission must answer before relying on FINRA's premises — who collected and verified the cost data, whether it was segmented by firm and offering size, what documentation permits replication, and what corrects the analysis if its assumptions fail. A record identifying no data owner, no verification control, and no segmentation cannot support a reasoned finding.

Current OMB Memoranda — Deregulatory Review and Accountability (benchmark)

Because the proposal in part removes express requirements, the current executive framework for deregulatory actions is relevant to how the action must be justified.[125] That framework underscores Part VII's point: a deregulatory change is not self-justifying, and removing a requirement does not establish that net burden has fallen rather than been relocated into interpretive uncertainty and defensive review.

OIRA Review, the PRA, the CRA, and External Oversight (conditional; requests)

Obelisk raises these as requests, not assertions of coverage. On OIRA, it asks the Commission to state whether the action was submitted for review under the current instructions, whether it was deemed significant, and what review or exemption applies; such review supplements, and does not replace, the statutory findings. On the Paperwork Reduction Act, if the source-recordkeeping requirement is a covered collection, it asks for the control number, a segmented burden-and-cost estimate, a duplication analysis, and a small-entity assessment.[126] On the Congressional Review Act, it asks the Commission to determine and state whether the approval order is a covered rule or an action of particular applicability outside coverage, and whether submission to Congress and the Comptroller General is required.[127] The Government Accountability Office, an inspector general, and government auditing standards are oversight mechanisms available only where

[123] OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs (Oct. 29, 1992), as updated by Appendix C (Mar. 6, 2026) and OMB Memorandum M-26-09 (Mar. 6, 2026); *see also* OMB Memorandum M-25-23 (Apr. 8, 2025).

[124] OMB Circular A-123, Management's Responsibility for Internal Control (Revised Mar. 10, 2026).

[125] OMB Memorandum M-25-20, Guidance Implementing Section 3 of Executive Order 14192 (Mar. 26, 2025); OMB Memorandum M-25-36, Streamlining the Review of Deregulatory Actions (Oct. 21, 2025); OMB Memorandum M-25-30, Ensuring Accountability (June 30, 2025). These are executive implementation instructions, not standing law binding the Commission or creating a private right of action.

[126] 44 U.S.C. §§ 3506(c), 3507. Conditional on a covered collection; Obelisk does not assume it.

[127] 5 U.S.C. §§ 801–808. Coverage is a threshold question; Obelisk does not contend it is established.

jurisdiction exists; Obelisk does not equate disagreement with misconduct, asks only that any distinct management-control or data-integrity issue be evaluated by the institution assigned to it, and notes that the Compliance Supplement is not implicated absent a federal-award nexus.[128]

The Regulatory-Accountability Chain

The instruments occupy defined places in one chain: rule text, to operational task, to resource cost, to regulated-party incentive, to behavioral response, to issuer transmission, to market and capital-formation effect. Circular A-4 governs the baseline, incidence, uncertainty, and alternatives analysis of that effect; the Paperwork Reduction Act and Regulatory Flexibility Act govern information-collection and small-entity analysis where applicable; the Exchange Act supplies the findings the Commission must make; the APA supplies the reasoned-decision requirement a court enforces; internal-control principles govern data reliability; the Government Accountability Office, inspector-general, and audit standards supply external assurance where jurisdiction exists; the Congressional Review Act supplies a congressional checkpoint for covered rules; and judicial review supplies set-aside or remand where warranted. Not every instrument governs every step, but at each step some institution has authority, some standard governs it, and some threshold activates it — and on this record the Commission cannot show that the steps within its own authority are satisfied.

Authority-to-Function and Applicability Matrix

Each authority is classified as directly applicable, conditional on a stated threshold, a methodological benchmark, an external-oversight or audit mechanism, or excluded for want of a concrete nexus. No instrument is asserted to bind FINRA, to independently invalidate the Commission's order, or to create a private right of action.

Authority	Applicability category and threshold	Function / question it answers	Use here
Exchange Act § 15A(b)(9)	Directly applicable — burden imposed through a FINRA rule	Is the competitive burden necessary or appropriate?	Direct
Exchange Act § 3(f)	Directly applicable — Commission action	Does the action promote efficiency, competition, and capital formation?	Direct

[128] Government auditing standards govern a covered audit only; they are not a merits standard for the approval decision.

Authority	Applicability category and threshold	Function / question it answers	Use here
Exchange Act § 19(b)(2)(C)	Directly applicable — Commission approval	May the Commission make the affirmative consistency finding?	Direct
Exchange Act § 23(a)(2)	Directly applicable — Commission action	Has the Commission considered the competitive effects it produces?	Direct
APA § 706	Directly applicable — final Commission order	Was the decision reasoned, supported, and within authority?	Direct
OMB Circular A-4 (2003; status per M-25-15)	Methodological benchmark; direct applicability to an independent agency requires verification	Were baseline, cost, incidence, uncertainty, and alternatives analyzed?	Benchmark
OMB Circular A-94 (1992; 2026 rates per M-26-09)	Conditional — multi-year quantified or discounted effects	Were future costs and benefits compared and discounted correctly?	Conditional
OMB Circular A-123 (rev. Mar. 10, 2026)	Methodological benchmark — federal management process	Are the data, controls, review, and accountability reliable?	Benchmark
OMB Circulars A-11, A-129, A-136	Excluded — no budget-execution, credit-program, or	—	Excluded

Authority	Applicability category and threshold	Function / question it answers	Use here
	financial-reporting nexus		
OMB M-25-20 and M-25-36 (deregulatory review)	Benchmark — current deregulatory-action framework	Must a deregulatory change be analyzed, not merely made?	Benchmark
OMB M-25-30 (accountability and audit)	Benchmark — oversight and audit expectations	Are oversight, audit, and correction mechanisms present?	Benchmark
OMB M-26-09 (2026 A-94 discount rates)	Conditional — applies if A-94 is triggered	What discount rates govern a multi-year analysis?	Conditional
Paperwork Reduction Act	Conditional — covered collection of information	Was the collection burden measured and cleared to a control number?	Conditional
Regulatory Flexibility Act	Conditional — covered rule or action	Were small-entity effects and significant alternatives analyzed?	Conditional
Congressional Review Act	Conditional — covered “rule” rather than an action of particular applicability	Was the action submitted to Congress and GAO and delayed as required?	Conditional
GAO oversight	External mechanism — congressional	Is external review or CRA compliance implicated?	Oversight

Authority	Applicability category and threshold	Function / question it answers	Use here
	request and jurisdiction		
SEC Office of Inspector General	External mechanism — audit, evaluation, or investigation jurisdiction	Is there a management-control, data-integrity, or integrity issue?	Oversight
Government auditing standards (GAGAS)	Applicable only to a covered audit	Is the evidence sufficient and independently verifiable?	Audit only
OMB Compliance Supplement	Excluded — no covered federal-award nexus	—	Excluded

Appendix I. Additional Supporting Record Deficiencies

These deficiencies support the ten principal failures in Part VI and the five controlling grounds. Each identifies a further respect in which FINRA's June 30 filing left a material matter unresolved; none is, by itself, decisive.

Supporting deficiency	Respect in which FINRA's filing left it unresolved	Governing provision	Ground(s) supported
The Commission's independent § 19(b)(2)(C) duty survives the refusal	FINRA's nonresponse does not discharge the Commission's own affirmative-finding obligation	§ 19(b)(2)(C)	2
No substantive response under § 3(f)	The downstream efficiency, competition, and capital-formation effects were not addressed	§ 3(f)	4

Supporting deficiency	Respect in which FINRA's filing left it unresolved	Governing provision	Ground(s) supported
No response to the § 15A(b)(6) free-and-open-market command	Whether the proposal removes or creates market impediments was not analyzed	§ 15A(b)(6)	3
No response on economic effect among small issuers and dealers	Whether fixed costs operate as unfair discrimination among protected classes was not examined	§ 15A(b)(6)	3
Partial Amendment No. 1 did not cure the nonresponse	The Amendment incorporated the Response as rebuttal but added no merits answer to Obelisk	§ 19(b)(1)	1
FINRA's own amendment confirms burden is material	FINRA revised the proposal for incumbents' burden arguments yet treated the same burden class as immaterial for small issuers	§ 15A(b)(9)	3
FINRA conflated direct legal duty with decisional relevance	That an authority does not bind FINRA does not make Obelisk's evidence irrelevant to the Commission's findings	§ 19(b)(2)(C)	1

Supporting deficiency	Respect in which FINRA's filing left it unresolved	Governing provision	Ground(s) supported
No cumulative-burden analysis	Whether the amendment compounds existing Rule 2210 and related requirements was not assessed	§ 15A(b)(9); § 3(f)	3, 4
The filing record lacks the required transparency	The basis for the proposal's cost, competition, and capital-formation premises was not stated for meaningful comment	§ 19(b)(1)	2
FINRA should not control the decisional frame through nonresponse	Characterizing a comment as outside scope cannot set the boundaries of the Commission's statutory inquiry	§ 19(b)(2)(C)	1, 2

Appendix J. Commission Decision Record

This is the answer sheet a lawful approval order must complete. For each principal issue, it states the finding the Commission must make, the evidence or alternative the present record needs before that finding can be made, and the consequence if the finding is unsupported. The actor responsible for supplying each missing item is FINRA, through the provision-specific supplemental response Obelisk requests, or the Commission, through independent resolution on an adequate record (Part IV.E; Part XVI). On the present record, the Commission cannot complete this table.

Issue	Finding the Commission must make	Evidence or alternative the record needs	Consequence if unsupported
Removal of express	Removal is consistent with investor	Evidence of harm, incidence, and materiality;	Order arbitrary; set-aside or remand

Issue	Finding the Commission must make	Evidence or alternative the record needs	Consequence if unsupported
projection disclosures	protection (§ 15A(b)(6))	an objective disclosure safe harbor	
Shift from bright-line disclosures to a general standard	The change reduces, rather than relocates, compliance burden	A two-sided net-effect analysis (burden removed against certainty lost)	No consistency finding
New source-recordkeeping requirement	No unnecessary or inappropriate burden on competition (§ 15A(b)(9))	Fixed-cost incidence segmented by firm and offering size; scaled recordkeeping	Set-aside or remand
Fixed-cost incidence on small firms	No disproportionate burden on, or unfair discrimination against, low-volume members	Minimum-viable-offering threshold evidence; small-firm tiering	No no-unfair-discrimination finding
Downstream small-issuer access	The action promotes capital formation (§ 3(f))	Intermediary pricing and participation evidence tracing effects to issuer access	No § 3(f) finding
Regulation A and Regulation S channels	Those channels are not materially burdened	Channel-specific analysis; offering-circular and offshore safe harbors	No cross-channel finding
Materially less burdensome alternatives	The Part XI package is inadequate to serve the	A reasoned analysis of each element of that package	Reasoned-decision failure

Issue	Finding the Commission must make	Evidence or alternative the record needs	Consequence if unsupported
	proposal’s purpose		
FINRA’s express nonresponse	Obelisk’s material objections are independently resolved	Provision-specific answers to each objection, from FINRA or the Commission	Unsupported final order; § 19(b)(2)(C) finding unavailable

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June 30, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File No. SR-FINRA-2026-004 (Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)) – Response to Comments

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. ("FINRA") submits this letter in response to comments received by the Securities and Exchange Commission ("SEC" or "Commission") to the above-referenced rule filing (the "Proposal"). As initially filed ("Initial Rule Filing"), the Proposal would amend FINRA Rule 2210 (Communications with the Public) to allow a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions.

The Commission published a notice seeking comment on the Initial Rule Filing in the Federal Register on February 25, 2026.[1] The Commission received 12 comment letters in response to the Initial Rule Filing Notice.[2] On April 7, 2026, FINRA consented to an extension of the time period for the SEC to take action on the Proposal until May 26, 2026. On May 20, 2026, the SEC issued an order pursuant to Section 19(b)(2)(B) of the Securities Exchange Act ("Exchange Act") to institute proceedings to determine whether to

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1 See Securities Exchange Act Release No. 104877 (February 20, 2026), 91 FR 9308 (February 25, 2026) (Notice of Filing of File No. SR-FINRA-2026-004) ("Initial Rule Filing Notice").

2 See Attachment A for the list of commenters and the abbreviations assigned to the commenters.

approve or disapprove the proposed rule change ("OIP").[3] The SEC received three comment letters in response to the OIP.[4]

In light of the comments received, and as explained in more detail below, FINRA proposes to amend the Proposal, as set forth in Partial Amendment No. 1, to remove the Initial Rule Filing's express "reasonable basis" language with respect to the criteria used and assumptions made in calculating projections. While the rule text would no longer include an express reasonable basis requirement, members would still have to comply with Rule 2210's general content standards, which provide equivalent protection.[5] In addition, as amended, the Proposal would change its approach with respect to the Initial Rule Filing's requirement to disclose the reasons why a projection might differ from actual performance or whether a projection is net of anticipated fees and expenses. The Proposal would remove the express language in the Initial Rule Filing requiring such disclosure and instead rely on Rule 2210's existing content standards that generally require disclosure of sufficient information to ensure that statements are clear and not misleading within the context in which they are made. Lastly, FINRA is amending the Initial Rule Filing to require members to maintain written records concerning the source of any projection of performance or targeted return used in a communication.

The following discusses Partial Amendment No. 1, as well as FINRA's responses, by topic, to the material points raised in the comments on both the Initial Rule Filing and those in response to the OIP.[6]

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3 See Securities Exchange Act Release No. 105524 (May 20, 2026), 91 FR 30750 (May 26, 2026) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2026-004).

4 See letters from James Hunter Poole, Executive Chairman & CEO, Obelisk Tech Systems Inc., to Vanessa A. Countryman, Secretary, SEC, dated May 27, 2026 ("Obelisk"); James P. Dowd, Chief Executive Officer, North Capital Private Securities, to Sherry R. Haywood Assistant Secretary, SEC, dated June 2, 2026 ("North Capital 2"); and Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Fund Association, to Vanessa A. Countryman, Secretary, SEC, dated June 16, 2026 ("MFA 2").

5 See Rule 2210(d)(1)(A), (B) and (F).

6 Accordingly, please consider this letter also to be FINRA's rebuttal to the comment letters submitted in response to the OIP.

I. Initial Rule Filing

Rule 2210 currently prohibits projections of performance or targeted returns in member communications, subject to specified exceptions.[7] The Initial Rule Filing would amend Rule 2210 to permit a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions.

First, the member would be required to adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. Second, the member would be required to have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and to retain written records supporting the basis for such criteria and assumptions. Third, the member would be required to provide sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.[8]

II. General Support for the Initial Rule Filing; Scope of Permissible Performance in Member Communications

The majority of commenters generally supported amending Rule 2210 to permit projections of performance and targeted returns in member communications.[9] However,

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7 See Rule 2210(d)(1)(F).

8 See Initial Rule Filing Notice, 91 FR at 9310.

9 See CAI; IAA; ICI; IPA; MFA 1; MMI; Monument; North Capital 1; SIFMA; Simpson Thacher. In response to the OIP, Obelisk submitted a 59-page comment letter, together with a 56-page attachment entitled "Master Administrative Record and Sworn Declaration, Regulation A Compliance Burden – Capital Formation Reform." Obelisk's submission does not comment on the substance of the Proposal, and much of the submission is outside the scope of this proposed rule filing. For example, the comment letter cites statutes or rules that do not apply to the Commission's review of the Proposal, or asks whether the requirements for Commission approval have been met without specifying which parts of the

many of these commenters suggested further alignment with the performance standards for registered investment adviser ("RIA") advertisements under the Investment Advisers Act of 1940 ("Advisers Act") Marketing Rule ("Marketing Rule").[10]

Several commenters suggested that the Initial Rule Filing is too limited because it only addresses projections of performance and targeted returns and should be more completely aligned with the Marketing Rule to address presentations of other types of performance.[11] Some commenters suggested that having different regulatory frameworks creates operational and compliance challenges for broker-dealers.[12] Some commenters

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Proposal Obelisk is concerned with. Accordingly, FINRA declines to respond to Obelisk's comment letter.

10 See 17 CFR 275.206(4)-1(d). See also Investment Advisers Act Release No. 5653 (December 22, 2020), 86 FR 13024 (March 5, 2021) (adoption of Investment Advisers Act of 1940 Rule 206(4)-1 (Investment Adviser Marketing)) ("Marketing Rule Release"). See, e.g., ICI (viewing the Initial Rule Filing "as an incremental step toward harmonization with the SEC standards"); SIFMA (stating that an "additional exception to the general prohibition for performance projections and targeted returns is positive . . . [h]owever, we believe FINRA can align Rule 2210 with the Marketing Rule further"); IAA (viewing the Initial Rule Filing as "an important step toward ensuring investors receive consistent and meaningful information in performance-related communications"); Simpson Thacher (stating that the Initial Rule Filing serves as "an important, albeit initial, step to better aligning the requirements for FINRA members and investment advisers"); Monument (recommending that "FINRA further align its rules more fully with the performance standards in the Marketing Rule").

11 See, e.g., IAA (stating that FINRA should extend the Initial Rule Filing to encompass all forms of hypothetical performance permitted under the Marketing Rule); ICI; MFA 1; MMI; Monument; SIFMA (suggesting that the Initial Rule Filing does not adequately justify different treatment with respect to the other types of hypothetical performance allowed under the Marketing Rule); Simpson Thacher.

12 See, e.g., MMI (noting competitive disadvantages, particularly for dual registrants and for sponsors and investment advisers that distribute materials through broker-dealer channels); ICI (suggesting that even slight differences in applicable communication standards for broker-dealers and investment advisers are difficult to operationalize and potentially confusing to investors); MFA 1 (stating that divergences between FINRA and SEC rules governing the same communications impose unnecessary compliance burdens on market participants and broker-dealers without corresponding investor protection benefits).

suggested that the Initial Rule Filing's approach would limit information to some investors and would create potential confusion, particularly where investors receive uneven information about the same investment strategies depending on the capacity of the party providing the information.[13]

Commenters also specifically suggested that backtested and model performance should be permissible in member communications in a manner consistent with the Marketing Rule.[14] Commenters believe that backtested performance is a helpful metric in evaluating investments, particularly for new strategies or strategies lacking current performance.[15] Some commenters asserted that sophisticated and institutional investors in particular rely on backtested and model performance.[16] Some commenters suggested that prohibiting broker-dealers from communicating backtested performance leads to materially different levels of information being provided to investors evaluating identical products.[17]

In addition, commenters suggested that the Proposal be amended to permit the use of related performance, which these commenters consider to be a helpful metric in

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[13] See IAA; MFA 1; Tobin (suggesting the Initial Rule Filing is unworkable because, among other things, it discourages sharing otherwise helpful financial models and forward-looking information with investors; raising general concerns with respect to the rationale for the Initial Rule Filing and further suggesting that investors generally benefit from information regarding anticipated future outcomes and that the Initial Rule Filing fails to provide broker-dealers with clear guidance as to what forward-looking information can be communicated to customers); SIFMA (stating that investor confusion may result from uneven access to information about the same investment strategies based solely on the regulatory channel through which the communication is delivered); ICI; MMI.

[14] See MMI (suggesting also that the Initial Rule Filing's view of backtested performance relies on dated studies and that academic literature has advanced with respect to frameworks to validate backtesting); IAA; MFA 1; MFA 2; Monument; SIFMA; Tobin.

[15] See SIFMA (stating that backtested performance is a core analytical tool for explaining investment methodologies, model changes, and new strategies for which no live performance history exists); MFA 1; MFA 2; Monument.

[16] See IAA; Monument; Simpson Thacher; Tobin.

[17] See SIFMA (suggesting that a fair and balanced standard, similar to that which applies under the Marketing Rule, would assuage concerns that backtested performance could be misleading); see also IAA; MFA 1; MMI; Tobin.

evaluating investments, particularly for new strategies or strategies lacking current performance.[18] Simpson Thacher noted that FINRA interpretive guidance allows, in some cases, related performance in communications to qualified purchasers and institutional investors.

Simpson Thacher also commented that the Initial Rule Filing does not specifically address portfolio or investment characteristics or the presentation of gross versus net of fees performance.[19] In addition, several commenters suggested that FINRA should include proposed rule text that specifically allows members to present forms of performance that are developed based on actual returns (e.g., permit the use of extracts from composites, composites of extracts, or track records based on the aggregation of actual positions across various accounts/funds).[20]

While FINRA recognizes commenters' desire to amend the Proposal to include additional performance standards beyond those for the presentation of projections of performance and targeted returns, such amendments are beyond the scope of this proposed rule filing. Accordingly, without expressing a view as to the merits of amending Rule 2210 and without foreclosing future potential amendments to adopt standards for other performance categories, FINRA declines to do so as part of this proposed rule filing.

III. Written Supervisory Procedures; Financial Expertise and Resources of Intended Audience

As discussed above, the Initial Rule Filing would require a member that presents projected performance or a targeted return to adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely

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18 See MFA 1; MFA 2; Monument; SIFMA.

19 See Simpson Thacher (noting that SEC staff has issued guidance allowing investment advisers to present certain portfolio or investment characteristics (e.g., sector or geographic returns) on a gross of fee basis without also showing the corresponding characteristics calculated after the deduction of all fees and expenses; additionally stating that SEC guidance further suggests that such portfolio or investment characteristics are not necessarily "performance," subject to the standards outlined in the Marketing Rule).

20 See IAA (stating that such presentations are derived from real investment decisions and outcomes); MMI (stating that carved-out and subset track records are derived from actual investments and are not hypothetical); MFA 1 (noting particular concerns with respect to private fund marketing material, which often include a track record derived from a subset of actual investments); MFA 2.

financial situation and investment objectives of the intended audience of the communication.

IPA requested clarification of this standard. It noted that the Initial Rule Filing Notice, when discussing the rule amendment, stated that the standard "will ensure that projections of performance and targeted returns are available only to investors who have the financial expertise and resources to understand the risks and limitations of these types of presentations."[21] IPA expressed concern that the statement could be read to alter the proposed rule text's requirements, since it would require a member to confirm that every investor who receives such a communication possesses such expertise and resources.

Monument commented that the requirement to adopt policies and procedures to ensure communications are relevant to the likely financial situation and investment objectives of recipients is duplicative of FINRA Rule 2111(b)'s suitability obligations with respect to institutional investors. In addition, MMI suggested various approaches that FINRA could take to provide safe harbors and additional guidance with respect to the requirement.[22]

MMI also requested that FINRA confirm that broker-dealers may look to SEC staff guidance under the Marketing Rule with respect to what would be considered an appropriate audience for projected performance, and that FINRA not adopt interpretations of audience appropriateness that differ from the SEC staff's interpretations.[23] MMI further suggested that FINRA clarify that the appropriate audience requirement does not impose a

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[21] Initial Rule Filing Notice, 91 FR 9308, 9313-14.

[22] See MMI (suggesting that, for a dual registrant, FINRA should clarify that certain customer information obtained in an advisory capacity may be relied upon for assessing an appropriate audience for communications; suggesting safe harbors for communications distributed only to institutional investors (as defined in FINRA Rule 2210(a)(4)), qualified purchasers (as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 ("ICA")), and accredited investors invested in funds relying on ICA Section 3(c)(1); suggesting a safe harbor that expressly permits dual registrants to use communications prepared in compliance with the Marketing Rule across advisory and broker-dealer channels).

[23] See Division of Investment Management, Marketing Compliance - Frequently Asked Questions (updated January 15, 2026) ("Marketing Rule FAQs"), https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/marketing-compliance-frequently-asked-questions.

de facto requirement to limit fund projections to institutional investors or qualified purchasers only.

FINRA believes that its proposed written policies and procedures requirements for the use of projections of performance and targeted returns is appropriate with respect to the presentation of such performance. FINRA notes that the Marketing Rule prohibits an RIA from including hypothetical performance[24] in an advertisement unless, among other things, the RIA "adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement."[25] As noted in the Marketing Rule Release, this condition is intended to "ensure that hypothetical performance is relevant to the *likely* financial situation and investment objectives of the *intended audience.*"[26] The Release states that "likely" was used "to clarify that an adviser is not required to know the actual financial situation or investment objectives of each investor that receives hypothetical performance."[27] Similarly, the Release states that the Commission chose the term "intended audience" in its final rule text "to clarify that advisers can comply with this condition, as well as other conditions related to hypothetical performance, by grouping investors into categories or types, and to emphasize that an investor might not be a natural person."[28]

FINRA recognizes that the Marketing Rule applies only to registered investment adviser advertisements and not to communications by broker-dealers, and that any guidance that the Commission or its staff provides with respect to the Marketing Rule would not apply to FINRA rules or the presentation of projected performance or targeted returns by broker-dealers. Accordingly, while FINRA proposes to adopt a similar approach with respect to the proposed written policies and procedures requirement, it does not intend

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24 "Hypothetical performance" is defined under the Marketing Rule to include, among other things, "[t]argeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement." See 17 CFR 275.206(4)-1(e)(8)(i)(C).

25 See 17 CFR 275.206(4)-1(d)(6)(i).

26 See Marketing Rule Release, 86 FR at 13083 (italics in original).

27 See id.

28 See id.

to delegate interpretation of this or any other provision in the Proposal to the Commission or its staff based on their interpretation of the Marketing Rule.[29]

With respect to any overlap between the Initial Rule Filing and Rule 2111(b), FINRA notes that Rule 2111's customer-specific suitability obligation addresses recommendations to non-retail customers of a securities transaction or investment strategy involving a security or securities.[30] In contrast, the proposed standards for projections of performance and targeted returns would apply to all communications and would not be triggered by any specific recommendation. Further, not all projections of performance or targeted returns would be relevant to all customers, institutional or otherwise. Accordingly, FINRA does not view the proposed amendments to Rule 2210 as duplicative of Rule 2111(b).

FINRA does not believe it is necessary to provide any specific safe harbors for member communications that include presentations of performance or targeted returns. The Initial Rule Filing does not prescribe a particular methodology for determining the appropriate audience for member communications that include projections of performance or targeted returns.[31] To be clear, nothing in Partial Amendment No. 1 would specifically require presentations of projected performance or targeted returns to be included only in communications with institutional investors. In addition, nothing in the Proposal specifies sources of information that a member must use to determine the appropriate audience for a communication that includes projected performance or a targeted return.

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[29] Similarly, should the Commission approve the Proposal, FINRA staff guidance concerning the Proposal would have no bearing on how the Marketing Rule applies to RIA communications.

[30] Rule 2111 does not apply to recommendations to retail customers as defined in Exchange Act Regulation Best Interest, 17 CFR 240.15*l*-1 ("Reg BI"). See FINRA Rule 2111.08.

[31] See Initial Rule Filing Notice, 91 FR at 9310 (stating that the rule "does not prescribe the ways in which a member may satisfy the policies and procedures requirement, including how the member will establish that the policies and procedures are reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication").

IV. Retail Investors and Recommendations

NASAA commented that FINRA should allow projections only in member communications to retail investors that include a recommendation of a securities transaction or investment strategy involving securities.[32] NASAA also recommended that FINRA require that broker-dealer written policies and procedures be designed to ensure that retail investors receiving projections have the financial expertise and resources to understand the risks and limitations of such presentations.[33]

FINRA does not agree that members should only be allowed to include projections in communications that make recommendations. To the extent that a member is recommending a securities transaction or investment strategy involving securities, Reg BI would protect retail investors, as it requires a broker-dealer to act in a retail customer's best interest when making such recommendations and to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.[34] Even in the absence of a specific recommendation, as explained in the Initial Rule Filing, Rule 2210's content standards and the proposed performance standards would provide safeguards to ensure broker-dealer customers, particularly retail customers, receive appropriate information.

As discussed above, FINRA intends for member communications including presentations of projected performance or targeted returns to only be distributed if the member has adopted written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication. FINRA intends for communications that include such performance information to only be distributed to investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations. This approach is consistent with FINRA's continued view, as stated in the Initial Rule Filing, that members generally would not be allowed to include projections in communications directed to a

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32 See NASAA (stating that, under the Initial Rule Filing, projections can be offered and shared with customers outside of a specific recommendation).

33 See NASAA (stating that nothing in proposed Rule 2210 itself would require broker-dealers to directly assess the financial expertise and resources of the investors to whom projections are directed).

34 See 17 CFR 240.15*l*-1(a)(1), (a)(2)(iv).

mass audience or intended for general circulation, including to a general retail investor audience.[35]

V. Reasonable Basis Requirement

Several commenters stated that the Initial Rule Filing's requirement that members have a reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns in member communications is not warranted because it is duplicative, burdensome, or unclear.[36] Commenters recommended that the reasonable basis requirement be replaced with a disclosure framework and fair and balanced standards.[37] Commenters further suggested that additional guidance would be needed to inform the reasonable basis assessment.[38]

In addition, several commenters stated that the proposed reasonable basis requirement would create challenges for broker-dealer communications that include projections of performance from third parties, such as a fund or its distributor, as broker-dealers would not have underlying data needed to undertake extensive due diligence for such performance.[39] Additionally, some commenters suggested that broker-dealer

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35 See Initial Rule Filing Notice, 91 FR 9308, 9310-11.

36 See ICI (noting that Rule 2210(d)(1)(A) already requires that "[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service"); MFA 1; MMI; Monument (suggesting that the reasonable basis requirement would unnecessarily burden member firms and placement agents with onerous and duplicative due diligence and recordkeeping requirements in connection with marketing private funds); SIFMA (stating that, when there is a recommendation of a securities transaction or investment strategy involving securities to a retail customer, Reg BI applies and requires a member to have a reasonable basis to believe the recommendation is in the best interest of the retail customer).

37 See ICI; MFA 1; MFA 2; SIFMA.

38 See ICI (stating that guidance would be helpful, particularly with respect to second-guessing if market conditions change); MMI (stating that for adviser-prepared materials guidance is needed as to what constitutes sufficient due diligence to satisfy the reasonable basis requirement).

39 See ICI; MFA 1; MFA 2; MMI (stating that FINRA should provide guidance on what constitutes adequate information or diligence with respect to third-party models, including a suggested minimum checklist covering model inputs, key

communications including projections prepared by investment advisers in compliance with the Marketing Rule should be deemed to have met the reasonable basis obligation and should not require broker-dealers to independently re-derive projection calculations.[40]

In response to these comments and upon further reflection, FINRA does not believe an express reasonable basis standard is needed because Rule 2210's existing content standards would preclude any unreasonable projections or targeted returns. In this regard, Rule 2210 requires all member communications to be based on principles of fair dealing and good faith, to be fair and balanced, and to provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service. Members also may not omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.[41]

Moreover, members are prohibited from making any false, exaggerated, unwarranted, promissory or misleading statement, claim, opinion, or forecast in any communication, nor may a member publish, circulate or distribute any communication that the member knows or has reason to know contains an untrue statement of a material fact or is otherwise false or misleading.[42] With these standards already applicable, FINRA has not identified a set of facts where a projection or performance or targeted return lacking a reasonable basis could comply with FINRA requirements.

Although the Proposal would no longer have an express reasonable basis requirement, FINRA proposes to amend Rule 2210's recordkeeping requirements to specify that members' communications records must include information concerning the source of

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assumptions, historical accuracy and validation, and known limitations); Monument; SIFMA (stating that there is uncertainty as to what would constitute a reasonable basis for the criteria used and assumptions made when a third party is responsible for the criteria and assumptions used to calculate performance projections or targeted returns – particularly since third parties often do not provide sufficient information about their criteria and assumptions to evaluate the reasonableness of their hypothetical returns).

40 See MFA 1; MMI (suggesting also that FINRA should create a safe harbor that expressly permits dual registrants to use communications prepared in compliance with the Marketing Rule across advisory and broker-dealer channels); Monument.

41 See Rule 2210(d)(1)(A).

42 See Rules 2210(d)(1)(B) and (d)(1)(F).

any projection of performance or targeted return.[43] FINRA believes requiring firms to keep records of information relating to projections and targeted returns will help substantiate the basis for such performance presentations.

FINRA recognizes that member communications may include projections of performance or targeted returns sourced from a third party. Where a third party (affiliated or unaffiliated) has created such performance, we would expect members to continue to meet the requirements of Rule 2210's content standards. For example, members are prohibited from publishing or circulating any communication that the member knows, or has reason to know, contains any untrue statement of material fact or is otherwise false or misleading.[44]

The level of due diligence necessary for members to assess presentations of performance calculated by third parties and used in member communications would depend on the facts and circumstances surrounding the communication. For example, FINRA would not generally expect a member to independently verify all of the criteria and assumptions underlying the calculation of a projection prepared by a third party. FINRA would, however, expect members to evaluate the source of such information, assess whether the available information in the projection is supported, and satisfy itself that the presentation meets the content standards of Rule 2210, as amended. Members would also need to consider the availability of information from the third party and whether such information would be necessary for a member to satisfy its Rule 2210 obligations.

VI. Treatment of Targeted Returns

Some commenters raised concerns with respect to the treatment of targeted returns, both in the Initial Rule Filing and under current Rule 2210. MMI stated that FINRA should amend the rule text or provide guidance to allow for certain targeted returns to be exempt from the Initial Rule Filing's requirement that a member have a reasonable basis for the criteria used and assumptions made in calculating a targeted return.

North Capital stated their general objection to FINRA's application of Rule 2210's general prohibition of communications that predict or project performance to targeted returns, on the ground that stating a return objective is not a prediction or projection. North Capital also suggested that the Initial Rule Filing's requirement that communications be relevant to the likely financial situation and investment objectives of the intended audience

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[43] See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 to Partial Amendment No. 1.

[44] See Rule 2210(d)(1)(B).

is unclear because a return objective is always relevant to an investor.[45] In its subsequent comment letter, North Capital asserted that conflating a projection with a return objective or target would be a "draconian interpretation that does not advance investor protection against fraud or manipulation." North Capital also commented that enabling investors to receive information considered to be important should promote informed decision-making by investors.[46]

As discussed above, FINRA has determined to no longer include an express reasonable basis requirement in the Proposal and, accordingly, there is no need for a specific exemption from this requirement for targeted returns. While targeted returns are aspirational in nature, FINRA continues to believe that the investor protection safeguards in Rule 2210, as amended, should continue to apply to both projections and targeted returns because the intended audience of a communication may not always understand or appreciate the distinction.

Moreover, FINRA does not view requiring a communication that contains a targeted return to meet Rule 2210's general content standards as "draconian." Nothing in the Proposal would prevent investors from receiving information about offerings that contain a targeted return, as long as the communication complies with Rule 2210's requirements. Accordingly, FINRA sees no need to exempt communications that contain targeted returns from Rule 2210's general content standards.

VII. Disclosure Requirements

Two commenters asserted that, in contrast to the Initial Rule Filing, there is no express requirement under the Marketing Rule to disclose why projected performance might differ from actual performance.[47] SIFMA stated that investor protection would be maintained if FINRA were to eliminate this requirement and align Rule 2210 with the Marketing Rule's fair and balanced standard. MMI recommended similar alignment with the Marketing Rule and stated that the Initial Rule Filing's requirement to disclose why projected performance or targeted returns might differ from actual performance imposes operational complexity for dual registrants and for broker-dealers distributing adviser-

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45 See North Capital 1.

46 See North Capital 2.

47 See SIFMA; MMI (stating also that FINRA should confirm that disclosures prepared in compliance with the Marketing Rule will be deemed sufficient for purposes of Rule 2210).

prepared materials. In addition, MMI objected more broadly, on the same basis, to the Initial Rule Filing's disclosure requirements, which would include the requirement to disclose whether the projected performance or targeted return is net of anticipated fees and expenses – which MMI claimed is not specifically required under the Marketing Rule.

In response to these comments and as stated in Partial Amendment No. 1, the Proposal would not expressly require disclosure of the reasons why a projection might differ from actual performance. In addition, the Proposal would not expressly require disclosure of whether a projection is net of anticipated fees and expenses. FINRA believes that, in retrospect, these disclosure requirements may be too narrow for communications that contain a projection of performance or targeted return, since Rule 2210's general content standards may require different disclosures to ensure that a communication that includes a projection of performance or targeted return is fair, balanced, and not misleading.

Notably, Rule 2210 requires that "[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service."[48] In addition, Partial Amendment No. 1 generally requires that members provide "sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made calculating the projected performance or targeted returns; and (ii) the risks and limitations of using such hypothetical performance in making investment decisions."[49] FINRA believes Rule 2210's general content standards, together with the disclosure requirements that are specific to projections of performance and targeted returns, will help ensure that investors receive information to consider the risks and limitations of relying on such performance in determining how to invest their money.

VIII. Internal Rates of Return

Several commenters noted that the Initial Rule Filing does not address internal rates of return ("IRR") or explain how the Proposal would impact existing guidance regarding IRR.[50] Prior FINRA guidance contained in Regulatory Notice 20-21[51] and a September 30,

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48 Rule 2210(d)(1)(A).

49 See proposed Rule 2210(d)(1)(F)(iv) in Exhibit 5 of Partial Amendment No. 1.

50 See IAA; MFA 1; MFA 2; MMI; Monument; Simpson Thacher.

51 See Regulatory Notice 20-21 (July 2020).

2021, FINRA FAQ[52] address marketing practices in connection with private offerings, including the presentation of IRR in member communications. In particular, FINRA has stated that "unrealized holdings have no actual performance experience, and any return metric would require its valuation to be estimated. Such metrics would represent a prohibited projection under FINRA Rule 2210(d)(1)(F)."[53] Several commenters asserted that IRR for actual investments or investment programs (even when based in whole or in part on IRRs of unrealized positions) is actual performance rather than a projection of performance.[54]

FINRA acknowledges the commenters' concerns regarding the discussion of IRR in Regulatory Notice 20-21 and the IRR FAQ. If the Commission approves the Proposal, FINRA will consider what additional guidance may be warranted.

IX. Exemptive Relief

CAI suggested that FINRA establish a formal exemptive relief process through which members may seek an exemption to permit the use of different types of performance presentations and product illustrations in their communications that are not expressly allowed under amended Rule 2210. FINRA does not believe exemptive relief is needed as part of the Proposal, as it only addresses projections of performance and targeted returns; creating an exemptive relief process for other types of performance is beyond its scope.

X. RILA Illustrations

CAI stated that it was their understanding that the use of projections and targeted returns contemplated by the Initial Rule Filing would be available for broker-dealer presentations of registered index-linked annuity ("RILA") illustrations and illustrations used with other types of insurance products. CAI also suggested that FINRA should provide greater flexibility to permit members to provide illustrations in a manner similar to what FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) allows for variable annuities.

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52 See FINRA Rule 2210 Frequently Asked Questions, section D.6 (Internal Rate of Return (IRR)), https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation ("IRR FAQ").

53 See IRR FAQ; see also MMI; Simpson Thacher.

54 See IAA; Monument; Simpson Thacher.

In the case of communications available to mass audiences, a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience. Accordingly, members generally would not be able to include projections of performance or targeted returns in communications directed to a mass retail investor audience because a member could not form any expectations about their financial situation or investment objectives.

Whether a RILA or other insurance product illustration that is intended for a mass audience contains a projection of performance will depend on the facts and circumstances of the communication. In addition, without commenting on the merits of the requested relief, FINRA notes that amendments to Rule 2211 are outside the scope of the Proposal.

XI. Recordkeeping

MMI stated that FINRA should specify that existing records maintained by dual registrants to satisfy the Marketing Rule, including policies and procedures, compliance reviews, and assumption documentation, may serve as the foundation for satisfying the dual registrant's broker-dealer recordkeeping obligations under the Proposal, as supplemented as appropriate by a brief memorandum documenting the broker-dealer's independent review. MMI further stated that FINRA should clarify that existing records maintained by dual registrants in connection with Marketing Rule compliance satisfy corresponding broker-dealer recordkeeping obligations under Rule 2210.

As stated herein, FINRA is proposing to revise Rule 2210's recordkeeping provisions to require a member to maintain records of information concerning the source of any projection of performance or targeted return.[55] Members are already required to keep records of information concerning the source of any statistical table, chart, graph, or other illustration used in a communication.[56] Accordingly, FINRA does not believe requiring firms to maintain this additional information would be overly burdensome. However, because investment advisers are subject to different recordkeeping standards, FINRA cannot categorically conclude that maintaining records required by the Marketing Rule and other Advisers Act rules would satisfy the requirements of this proposed amendment.

XII. Capital Acquisition Broker Rules

Monument suggested that the standards for projections in communications to institutional investors should be similar to those applicable to Capital Acquisition Broker

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55 See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 of Partial Amendment No. 1.

56 See Rule 2210(b)(4)(A)(iv).

(“CAB”) communications under the CAB Rules.[57] Monument stated that the CAB rules apply only to brokers marketing unregistered securities to institutional investors and that such rules do not prohibit the use of projections in any form.

FINRA notes that CABs are subject to an entirely separate rulebook that is specifically limited to CABs approved by FINRA to engage solely in specified, limited activities.[58] The proposed changes to Rule 2210 contemplate that broker-dealers would be permitted to deliver projections in communications to a broader range of investors (subject to specified conditions) than those who interact with CABs, and thus FINRA does not believe that the CAB Rules’ communications standards are appropriate for non-CAB firms.

XIII. Current FINRA Staff Guidance on the Presentation of Performance

Over the years, FINRA has issued guidance in the form of interpretive letters, Regulatory Notices, FAQs, and other means that addresses how members may present performance in their communications. Should the Commission approve the proposed changes as outlined in Partial Amendment No. 1, FINRA will consider whether such guidance should be modified or withdrawn.

FINRA believes that the foregoing responds to the material issues raised by the commenters to the Proposal. If you have any questions, please contact me at (240) 386-4534, email: joe.savage@finra.org.

Best regards,

Joseph P. Savage

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57 See CAB Rule 221.

58 See CAB Rule 016(c) (definition of capital acquisition broker).

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2026-004

1. Meredith J. Abrams, David W. Blass, & Joshua Kim, Simpson Thacher & Bartlett LLP ("Simpon Thacher") (March 18, 2026)

2. Gail C. Bernstein & Sanjay Lamba, Investment Adviser Association ("IAA") (March 17, 2026)

3. Bernard V. Canepa, Securities Industry and Financial Markets Association ("SIFMA") (March 18, 2026)

4. Anya Coverman, Institute for Portfolio Alternatives ("IPA") (March 18, 2026)

5. Molly M. Diggins, Monument Group, Inc. ("Monument") (March 18, 2026)

6. James P. Dowd, North Capital Private Securities ("North Capital 1") (February 27, 2026)

7. Marni Rock Gibson, North American Securities Administrators Association, Inc. ("NASAA") (March 18, 2026)

8. Jennifer W. Han, Managed Funds Association ("MFA 1") (March 20, 2026)

9. Clifford Kirsch & Eric Arnold, Eversheds Sutherland (on behalf of the Committee of Annuity Insurers) ("CAI") (March 18, 2026)

10. Craig Pfeiffer & Kenneth Bossen, Money Management Institute ("MMI") (March 18, 2026)

11. Matthew Thornton & Erica Evans, Investment Company Institute ("ICI") (March 18, 2026)

12. Justine Tobin, Tobin & Company Securities LLC ("Tobin") (March 18, 2026)

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2026 - * 004
Amendment No. (req. for Amendments *) 1

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Ilana
Last Name *	Reid
Title *	Associate General Counsel
E-mail *	ilana.reid@finra.org
Telephone *	(202) 728-8268
Fax	

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/30/2026

By Joseph Savage (Name *)

Vice President & Associate General Counsel (Title *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Joseph Savage Digitally signed by Joseph Savage
Date: 2026.06.30 11:52:41 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add Remove View FINRA-2026-004 Partial A-1 Exhibit 4.	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View FINRA-2026-004 Partial A-1 Exhibit 5.	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View FINRA-2026-004 Partial A-1.docx	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On February 10, 2026, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, SR-FINRA-2026-004 (the "Proposal").

As initially filed ("Initial Rule Filing"), the Proposal would amend FINRA Rule 2210 (Communications with the Public) to allow a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions to ensure these projections are carefully derived from a sound basis.

Rule 2210 currently prohibits members from predicting or projecting performance, implying that past performance will recur or making any exaggerated or unwarranted claim, opinion or forecast in member communications, subject to three exceptions.[1] The Initial Rule Filing would amend Rule 2210 to create a fourth exception from this prohibition to allow a member to present a projection of performance or a targeted return with respect to a security, securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions. The additional exception would be conditioned on: (1) the member adopting and implementing written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication; (2) the member having a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retaining written records supporting the basis for such criteria and assumptions; and (3) the member providing sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.[2]

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1 See FINRA Rule 2210(d)(1)(F). The current exceptions from the prohibition of projections of performance are for: (i) hypothetical illustrations of mathematical principles that do not predict or project performance of an investment or investment strategy; (ii) an investment analysis tool or a written report produced by an investment analysis tool that meets the requirements of FINRA Rule 2214; and (iii) a price target in a research report on debt or equity securities, subject to specified conditions.

2 See Securities Exchange Act Release No. 104877 (February 20, 2026), 91 FR 9308, 9310 (February 25, 2025) (Notice of Filing of File No. SR-FINRA-2026-004) ("Initial Rule Filing Notice").

The Commission published the Initial Rule Filing for public comment in the Federal Register on February 25, 2026.[3] The Commission received 12 comment letters on the Initial Rule Filing.[4] On April 7, 2026, FINRA consented to an extension of the time period for the SEC to take action on the Proposal until May 26, 2026. On May 20, 2026, the SEC issued an order pursuant to Section 19(b)(2)(B) of the Exchange Act to institute proceedings to determine whether to approve or disapprove the proposed rule change ("OIP").[5] The SEC received three comment letters in response to the OIP.[6]

FINRA is submitting by separate letter its Response to Comments on the Proposal ("Response to Comments") contemporaneously with this Partial Amendment No. 1, which also serves as a rebuttal to the three comment letters submitted in response to the OIP. FINRA has determined to amend the proposed rule and modify its approach to the "reasonable basis" requirement in the Initial Rule Filing. With this amendment, FINRA would remove from the new exception the express language requiring that a member have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return. Instead, as discussed in greater detail in the Response to Comments, members would be required to comply with existing content standards in Rule 2210 to ensure the projections are properly supported and have a sound basis.

Although the Proposal would no longer have an express reasonable basis requirement related specifically to projections of performance and targeted returns, FINRA is proposing to amend Rule 2210's recordkeeping requirements to specify that members' communications records must include information concerning the source of any projection of performance or targeted return.[7]

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3 See Initial Rule Filing Notice.

4 See Attachment A for the list of commenters and the abbreviations assigned to the commenters.

5 See Securities Exchange Act Release No. 105524 (May 20, 2026), 91 FR 30750 (May 26, 2026) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2026-004).

6 See letters from James Hunter Poole, Executive Chairman & CEO, Obelisk Tech Systems Inc., to Vanessa A. Countryman, Secretary, SEC, dated May 27, 2026 ("Obelisk"); James P. Dowd, Chief Executive Officer, North Capital Private Securities, to Sherry R. Haywood Assistant Secretary, SEC, dated June 2, 2026 ("North Capital 2"); and Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Fund Association, to Vanessa A. Countryman, Secretary, SEC, dated June 16, 2026 ("MFA 2").

7 See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 to Partial Amendment No. 1.

In addition, FINRA is modifying its approach with respect to the Initial Rule Filing's requirement to disclose the reasons why a projection might differ from actual performance or whether a projection is net of anticipated fees and expenses. The Proposal would remove the express language in the Initial Rule Filing requiring such disclosure and instead rely on a modified general standard for projections of performance or targeted returns as well as Rule 2210's existing general content standards, which, together, would require disclosure of sufficient information to ensure that statements are understandable, properly supported, and not misleading within the context in which they are made.

The changes proposed in this Partial Amendment No. 1 are described more fully below.

Reasonable Basis & Recordkeeping Requirements

Currently, Rule 2210 currently prohibits projections of performance or targeted returns in member communications, subject to specified exceptions.[8] The Initial Rule Filing would have allowed a member to project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications, subject to specified conditions, including an express requirement that the member have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return and, in addition, that the member retain written records supporting the basis for such criteria and assumptions.

As discussed in the Response to Comments, several commenters stated that the Initial Rule Filing's requirement that members have a reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns in member communications is duplicative, burdensome, or unclear.[9] Commenters also suggested that the Initial Rule Filing's approach to the reasonable basis requirement should be removed and replaced with a disclosure framework and fair and balanced standards. Additionally, some commenters suggested that broker-dealer communications including projections prepared by investment advisers in compliance with the Investment Advisers Act of 1940 ("Advisers Act") Marketing Rule ("Marketing Rule")[10] should be deemed to have met the reasonable basis obligation and should not require broker-dealers to independently re-derive projection calculations.[11]

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8 See Rule 2210(d)(1)(F).

9 See ICI; MFA; MMI; Monument; SIFMA.

10 See 17 CFR 275.206(4)-1.

11 See MFA; MMI; Monument.

FINRA is proposing to eliminate the express reasonable basis requirement in the Initial Rule Filing in favor of relying upon the existing general content standards in Rule 2210. FINRA does not believe an express reasonable basis standard is needed because Rule 2210's existing content standards would preclude any unreasonable projections or targeted returns. FINRA member communications, including those involving presentations of performance, must comply with Rule 2210's general content standards, which provide, among other things, that all communications must be "based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service."[12]

In addition, member communications may not make any false, exaggerated, unwarranted, promissory, or misleading statement or claim, opinion or forecast.[13] Further, "[m]embers must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits,"[14] and may not "publish, circulate or distribute any communication that the member knows or has reason to know contains an untrue statement of a material fact or is otherwise false or misleading."[15]

With these standards already applicable to all member communications—including those containing projections of performance or targeted returns—FINRA has not identified a set of facts where a projection or performance or targeted return lacking a reasonable basis could comply with FINRA requirements.

A commenter also suggested that the recordkeeping requirement associated with the reasonable basis standard should be modified. MMI stated that FINRA should specify that existing records maintained by dual registrants to satisfy the Marketing Rule, including policies and procedures, compliance reviews, and assumption documentation, may serve as the foundation for satisfying the dual registrant's broker-dealer recordkeeping obligations under the Initial Rule Filing, as supplemented as appropriate by a brief memorandum documenting the broker-dealer's independent review. MMI further stated that FINRA should clarify that existing records maintained by dual registrants in connection with Marketing Rule compliance satisfy corresponding broker-dealer recordkeeping obligations under Rule 2210.

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12 See Rule 2210(d)(1)(A).

13 See Rule 2210(d)(1)(B) and (d)(1)(F).

14 Rule 2210(d)(1)(D).

15 See Rules 2210(d)(1)(B) and (d)(1)(F).

As discussed, FINRA is no longer proposing to expressly require that members have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return. Partial Amendment No. 1 would, however, amend Rule 2210's recordkeeping requirements to specify that members' communications records must include information concerning the source of any projection of performance or targeted return.[16]

FINRA believes requiring firms to keep records of information relating to projections and targeted returns will help substantiate the basis for such performance presentations. Members are already required to keep records of information concerning the source of any statistical table, chart, graph, or other illustration used in a communication.[17] Thus, requiring firms to maintain information relating to projections and targeted returns is consistent with these existing obligations and would not be overly burdensome. Because of differences in recordkeeping requirements between broker-dealers and RIAs, however, FINRA cannot categorically conclude that maintaining records required by the Marketing Rule and other Advisers Act rules would satisfy the requirements of this proposed amendment and other broker-dealer recordkeeping rules in all circumstances.

Disclosure Requirements

The Initial Rule Filing would have conditioned a member communication including a projection of performance or a targeted return upon the member providing sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.[18]

As discussed in the Response to Comments, two commenters asserted that, in contrast to the Initial Rule Filing, the Marketing Rule does not include an express requirement to disclose why projected performance might differ from actual performance.[19] SIFMA stated that investor protection would be maintained if FINRA were to eliminate this requirement and adopt a standard aligned to Marketing Rule's fair and balanced standard. MMI recommended similar alignment and stated that the Initial

[16] See proposed Rule 2210(b)(4)(A)(iv) in Exhibit 5 to Partial Amendment No. 1.

[17] See Rule 2210(b)(4)(A)(iv).

[18] See Initial Rule Filing Notice, 91 FR at 9310.

[19] See MMI; SIFMA.

Rule Filing's requirement to disclose why projected performance or targeted returns might differ from actual performance imposes operational complexity, particularly for dual registrants and for broker-dealers distributing adviser-prepared materials. In addition, MMI objected more broadly, on the same basis, to the Initial Rule Filing's disclosure requirements, which would include the requirement to disclose whether the projected performance or targeted return is net of anticipated fees and expenses.

In response to comments, Partial Amendment No. 1 would no longer include rule text to expressly require disclosure of the reasons why a projection might differ from actual performance or whether the projected performance or targeted return is net of anticipated fees and expenses. Instead, FINRA is proposing a general standard that would require members to provide sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions.

Rule 2210's general content standards may require other disclosures—including but not limited to those expressly stated in the Initial Rule Filing—to ensure that a communication that includes a projection of performance or targeted return is fair, balanced, and not misleading. As noted, Rule 2210 requires that "[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service."[20] FINRA believes Rule 2210's general content standards, together with the disclosure requirements that are specific to projections of performance and targeted returns, will help ensure that investors receive information to consider the risks and limitations of relying on such performance in determining how to invest their money.

With this Partial Amendment No. 1, FINRA is including (1) Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, marked to show changes to the text as proposed in the Initial Rule Filing; and (2) Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 1.

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[20] Rule 2210(d)(1)(A).

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2026-004

1. Meredith J. Abrams, David W. Blass, & Joshua Kim, Simpson Thacher & Bartlett LLP ("Simpon Thacher") (March 18, 2026)
2. Gail C. Bernstein & Sanjay Lamba, Investment Adviser Association ("IAA") (March 17, 2026)
3. Bernard V. Canepa, Securities Industry and Financial Markets Association ("SIFMA") (March 18, 2026)
4. Anya Coverman, Institute for Portfolio Alternatives ("IPA") (March 18, 2026)
5. Molly M. Diggins, Monument Group, Inc. ("Monument") (March 18, 2026)
6. James P. Dowd, North Capital Private Securities ("North Capital") (February 27, 2026)
7. Marni Rock Gibson, North American Securities Administrators Association, Inc. ("NASAA") (March 18, 2026)
8. Jennifer W. Han, Managed Funds Association ("MFA") (March 20, 2026)
9. Clifford Kirsch & Eric Arnold, Eversheds Sutherland (on behalf of the Committee of Annuity Insurers) ("CAI") (March 18, 2026)
10. Craig Pfeiffer & Kenneth Bossen, Money Management Institute ("MMI") (March 18, 2026)
11. Matthew Thornton & Erica Evans, Investment Company Institute ("ICI") (March 18, 2026)
12. Justine Tobin, Tobin & Company Securities LLC ("Tobin") (March 18, 2026)

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

2210. Communications with the Public

(a) No Change.

(b) Approval, Review and Recordkeeping

(1) through (3) No Change.

(4) Recordkeeping

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) through (iii) No Change.

(iv) information concerning the source of any statistical table, chart, graph, projection of performance, targeted return, or other illustration used in the communication;

(v) through (vi) No Change.

(B) No Change.

(c) No Change.

(d) Content Standards

(1) General Standards

(A) through (E) No Change.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214;

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target; and

(iv) A communication that projects the performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, provided that the member:

a. adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication;

[b. has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retains written records supporting the basis for such criteria and assumptions;] and

b. [c.] provides sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return[, including whether the projected performance or targeted return is net of anticipated fees and expenses]; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions[, including reasons why the projected performance or targeted return might differ from actual performance].

(2) through (9) No Change.

(e) through (g) No Change.

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EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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2200. COMMUNICATIONS AND DISCLOSURES

2210. Communications with the Public

(a) No Change.

(b) Approval, Review and Recordkeeping

(1) through (3) No Change.

(4) Recordkeeping

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) through (iii) No Change.

(iv) information concerning the source of any statistical table, chart, graph<u>, projection of performance, targeted return,</u> or other illustration used in the communication;

(v) through (vi) No Change.

(B) No Change.

(c) No Change.

(d) Content Standards

(1) General Standards

(A) through (E) No Change.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; [and]

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target; <u>and</u>

<u>(iv) A communication that projects the performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, provided that the member:</u>

<u>a. adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation</u>

and investment objectives of the intended audience of the communication; and

b. provides sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions.

(2) through (9) No Change.

(e) through (g) No Change.

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