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July 24, 2026

Ms. Vanessa Countryman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SR-FINRA-2026-004 – Partial Amendment No. 1 to Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities litigation. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure.

PIABA submits this comment to express our opposition to the rule change as amended by FINRA relating to FINRA Rule 2210 (Communications with the Public).

Background

A longstanding standard in the financial services industry is that projections of future returns of investments are inherently misleading in most circumstances. Even FINRA's own regulatory materials state in Regulatory Notice 20-21, retail communications "may not project or predict ***returns to investors*** such as yields, income, dividends, capital appreciation percentages or any other future investment performance."[1] This prohibition extends to retail communications that include target returns to investors. These representations of returns for specific investments are required to be balanced by fulsome risk disclosures. Prediction of future performance has been traditionally viewed as being unbalanced sales presentation, where the potential future returns are emphasized far more than the risks being taken to achieve those returns. Projections or suggestions of future performance are often relied upon more heavily by investors, creating a more serious investor protection concern particularly where investors rely on these projections which are often incredibly uncertain and complex.

The stated reason for FINRA's proposal to change the rule and potentially allow these projections in the first place is a claimed competitive disadvantage with registered investment advisers. "The proposal is intended to better align the regulatory requirements for broker dealers

[1] FINRA, Regulatory Notice 20-21, at p. 4, at https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-21.pdf (emphasis in original).

that present performance projections or targeted returns in written communications to investors with those for investment advisers."[2] The race to the regulatory bottom argument is unavailing. The SEC requires registered investment advisers to comply with the Marketing Rule, which is similar in both scope and concept as FINRA Rule 2210. To whatever extent FINRA Rule 2210 is more prescriptive than the SEC Marketing Rule is deadened by the fact that investment advisers are fiduciaries to their clients as a matter of law, meaning that whatever return-based projections are disseminated to clients will be held to the strictest scrutiny.

Nevertheless, brokerage firm business concerns must not take precedence over investor protection. Specifically, if the SEC were to permit brokerage firms to create and provide these types of predictions of future performance to retail investors, it cannot be at the expense of investors being given fair and balanced views of the risks, as well as the potential benefits, of the investment. PIABA submits this comment because the bar association believes the current amendment fails in that basic proposition and would expose countless investors to substantial risk of misleading and unbalanced sales presentations.

Scope of the Rule

As originally written, the proposed change to FINRA Rule 2210 included various safeguards which were geared toward preventing these projections from being abused. The change to the proposed amendment strips virtually all of these safeguards. Specifically, the original rule change included requirements that firms "(1) have a reasonable basis for the criteria used and assumptions made in calculating a projected performance or targeted return in a communication with the public, and (2) retain written records supporting the basis for such criteria and assumptions."[3]

The stated basis for removing these safeguards in the amendment is a claim that the general requirements of FINRA Rule 2210(d)(1) provide effectively the same requirements.[4] However, this is already inconsistent with Rule 2210 itself. Specifically, FINRA *already* requires various types of communications with the public to include a "reasonable basis" requirement above and beyond that contained in 2210(d)(1). This includes (1) price targets (2210(d)(1)(F); (2) communications including a recommendation of securities (2210(d)(7); and (3) recommendations in public appearances including a recommendation of securities (2210(f)(2). As such, FINRA has repeatedly taken the position that an additional requirement that communications to retail investors have a reasonable basis is a necessary and reasonable precaution *above and beyond* the requirements contained in (d)(1). This policy is equally applicable here.

Even if, as argued by certain FINRA membership, this requirement is redundant to (d)(1), then there is no burden placed on any FINRA member to comply with the reasonable basis

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[2] FINRA, SEC Begins Review of FINRA Proposal on Performance Projections, May 27, 2026, https://www.finra.org/compliance-tools/weekly-archive/05272026.

[3] See proposed FINRA Rule 2210(d)(1)(F)(iv)(b) as proposed in the Initial Rule Filing.

[4] *See* FINRA Response Letter at 12.

requirement; they would have had to do so anyway. Conversely, if and when any situations arise where the “reasonable basis” requirement is actually more burdensome to the member, then that is precisely the level of burden they should carry. No unreasonable assumptions should be permitted to include in projections being provided to and relied upon by retail investors. This should not be a controversial position.

Additionally, this proposed amendment removes the requirement that FINRA members maintain a record of the basis for the assumptions upon which these projections are based. This is a critical investor protection safeguard. FINRA members cannot be permitted to solicit business from customers based on projections of future performance and then, when those projections fail t, be unable to account for the methodology that was used to create it. The lack of such a requirement would effectively preclude regulators and investors t from testing the “fairness” and “reasonableness” of these projections.

FINRA is further proposing to eliminate the Initial Rule Filing’s proposed requirement that members expressly disclose: (1) whether any projected performance or targeted return appearing in a communication with the public is net of anticipated fees and expenses, and (2) the reasons why a projected performance or targeted return appearing in a communication with the public might differ from actual performance. FINRA’s stated rationale, once again, is that FINRA Rule 2210’s general content standards would suffice.

Once again, the stated basis for this amendment, as advocated by FINRA members, is dubious. If, as they claim, these requirements are redundant, and every member firm would have to disclose these issues in every projection anyway to comply with the general content standards, then there is no burden on any FINRA member for these requirements to be expressly included in the rule. If, on the other hand, there would be FINRA members who might not expressly disclose whether a projection was inclusive of the member’s fees, then customers absolutely should know that. The customer has the right to know the basis of any performance projection, because it is a fact material to the purchase and sale of a security. FINRA has not made a compelling case to strip these important investor safeguards, and these changes will create exponentially more investor protection problems.

PIABA requests that the Commission reject these proposed Amendments to FINRA Rule 2210 to ensure high standards of investor protection in FINRA Members’ communications with the public. PIABA thanks the Commission and FINRA for the opportunity to comment on this proposal.

Very Truly Yours,

Michael C. Bixby
President, Public Investors Advocate Bar Association