



March 20, 2026

Via Electronic Mail: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

MFA¹ appreciates the opportunity to submit comments on the notice published by the U.S. Securities and Exchange Commission (“**Commission**” or “**SEC**”) of proposed amendments by the Financial Industry Regulatory Authority (“**FINRA**”) to Rule 2210 governing broker-dealer communications with the public (the “**Proposal**”)².

MFA supports FINRA’s efforts, subject to the Commission’s oversight and approval, to modernize Rule 2210 in a manner that reflects current market practices and investor expectations. That Rule’s prohibition on broker-dealer communications predicting or projecting performance has been a source of tension, especially for private fund managers. Prospective investors frequently ask for target returns and projections to understand potential investment risk-reward characteristics. Although the SEC’s Marketing Rule (the “**Marketing Rule**”)³ permits investment advisers to use hypothetical performance (including targets and projections), FINRA Rule 2210 prohibits broker-dealers and dually-registered advisers from providing the same information. Allowing broker-dealers to include target returns and projected performance in communications with the public is a constructive step toward regulatory modernization and would foster regulatory consistency and fairness. Investors increasingly engage with the same investment products through different intermediaries—including registered investment advisers, broker-dealers and dually registered firms—and

¹ Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² 91 Fed. Reg. 9308 (“**Proposing Release**”)

³ 17 CFR 275.206(4)-1.

Washington, DC
1301 Pennsylvania Ave NW
Suite 350
Washington, DC 20004

New York
546 5th Avenue
12th Floor
New York, NY 10036

Brussels
40 Rue D’Arlon
1000 Brussels, Belgium

London
14 Hanover Square, Mayfair,
London, United Kingdom, W1S 1HT

giving less robust information to broker-dealer clients and clients of dually-registered firms seems contrary to the overall regulatory goals.

Other aspects of Rule 2210 and its interpretation have also led to confusion and inconsistency in how advisers and other financial intermediaries market the same investment products. We recommend that the Commission direct FINRA to more closely align with the SEC's definition of hypothetical performance by explicitly extending Rule 2210 to permit the use of back-tested and model performance—types of hypothetical performance—with suitable disclosures. Furthermore, we observe that FINRA interpretive guidance has placed further restraints on the use of internal rates of return and that position should similarly be reevaluated to better align with the SEC's Marketing Rule.

As the Commission evaluates FINRA's proposal pursuant to its statutory responsibility to review and approve self-regulatory organization ("SRO") rules, MFA urges the Commission to direct FINRA to:

- **Expand the scope of permitted hypothetical performance** to align with the SEC's Marketing Rule;
- **Address carved-out and subset track records explicitly**, confirming that performance derived from actual investments (such as sector-specific or strategy-specific subsets) may be presented provided the methodology is disclosed;
- **Eliminate the proposed "reasonable basis" and enhanced recordkeeping requirement**, as inconsistent with the Marketing Rule and unnecessary given other FINRA rule provisions;
- **Update FINRA guidance regarding internal rate of return ("IRR") by revoking that portion of Regulatory Notice 20-21⁴**, clarifying the uses and presentation of IRR to more flexibly conform to industry practices.

Regulatory divergence between SRO rules and Commission rules governing the same communications imposes unnecessary compliance burdens on market participants without corresponding investor protection benefits. More complete alignment streamlines regulation, facilitates capital formation, and ensures that investors have consistent access to useful information to make informed decisions, regardless of whether they engage with a broker-dealer, a registered investment adviser or a dual registrant. Absent a clear and compelling policy rationale, differences between the two regimes risk undermining regulatory efficiency, investor understanding and place undue burdens on market participants.

⁴ Regulatory Notice 20-21 available at <https://www.finra.org/rules-guidance/notices/20-21>

I. Discussion

New proposed Rule 2210(d)(1)(F)(iv) would permit broker-dealers to distribute materials that include projected performance and target returns subject to three conditions:

1. *Written policies and procedures*: The broker-dealer must adopt and implement written policies and procedures reasonably designed to ensure the communication is “relevant to the likely financial situation and investment objectives of the intended audience of the communication.”
2. *Reasonable basis and recordkeeping*: The broker-dealer must have a “reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return” and must retain “written records supporting the basis for such criteria and assumptions.”
3. *Disclosure requirements*: The communication must 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.”

A. Expand Scope

The Proposal only applies to projected performance and target returns, not other types of hypothetical performance permitted under the Marketing Rule, such as back-tested and model performance. FINRA does not adequately justify treating these other types of hypothetical performance differently.

The general standards contained in Rule 2210 already require that communications be fair and balanced, provide a sound basis for evaluating the facts in regard to any particular security or type of security and not contain false, exaggerated, unwarranted, promissory or misleading content.⁵ In addition, FINRA points out in the Proposal that broker-dealers interacting with retail investors will be required to act in an investor’s best interest when making any recommendation regardless of whether a projection is used as the basis for that recommendation.⁶ As the same duties apply to any other hypothetical performance information provided, excluding other types of information permitted by the Marketing Rule is not warranted.

FINRA explained its proposed changes as providing additional sources of information for investors in their investment decision making. FINRA also highlighted institutional and other sophisticated investors in

⁵ See Proposing Release, footnote 45. See FINRA Rule 2210(d)(1) (general standards).

⁶ Proposing Release, page 75.

particular, who develop their own opinions regarding the future performance of an investment based on the multiple sources of information at their disposal.⁷ For example, when historical performance data is not available, back-tested and related performance data can offer investors valuable information in evaluating an investment opportunity. Denying investors the ability to access the full spectrum of information permissible under the Marketing Rule because they happen to engage with a broker-dealer rather than an investment adviser does not serve those interests. While FINRA laudably seeks to reduce “investor confusion that results from investors receiving different information about the same investments depending on the financial professional,” this narrow Proposal may unwittingly undermine that goal.

We recommend that the Commission direct FINRA to expand the scope of permitted hypothetical performance to align with the Marketing Rule by allowing broker-dealers to distribute adviser-prepared marketing materials that include hypothetical performance where the adviser has complied with the Marketing Rule and the broker-dealer has conducted and documented reasonable due diligence on those materials.⁸

B. Explicitly address carved-out and subset track records

The Proposal does not address other types of performance information that are commonly used in private fund marketing material. For example, private fund sponsors often prepare track records from a subset of actual investments from their prior funds to promote a new strategy (e.g., the performance of all energy industry investments in prior multi-strategy funds).

These performance figures are constructed from actual transactions but are typically treated as hypothetical performance under the Marketing Rule. Prospective investors examining a new strategy regularly seek this type of information to make informed investment decisions. We recommend that the Commission direct FINRA to explicitly clarify that these types of track records are permissible for broker-dealers to provide to their clients under Rule 2210.

C. Delete “Reasonable Basis” requirement and related enhanced recordkeeping requirement

The Proposal requires that broker-dealers providing projected performance and target returns to clients must establish a “reasonable basis” for the criteria used and assumptions made in those calculations and retain written records supporting that analysis. This means the broker-dealer would have to inquire into the

⁷ Proposing Release, page 76.

⁸ We note that Regulation Fair Disclosure (see 17 CFR 243) prevents the broker-dealer from distributing material containing certain information related to public companies to a select group of investors. FINRA, in consultation with the SEC, should clarify the use of hypothetical performance for vehicles such as registered investment companies and business development companies in instances where the broker-dealer has determined that the hypothetical performance is only appropriate for institutional audiences.

accuracy of the underlying data (including data from third party models) and retain those extensive diligence records.

If a private fund adviser is providing hypothetical performance to a broker-dealer (whether a projection, target or other hypothetical performance measure), it is difficult if not impossible for a broker-dealer to obtain and analyze all the underlying data. If the adviser-provided information, including disclosures, conforms to the requirements for hypothetical performance in the Marketing Rule, the additional obligations on the broker-dealer—beyond normal due diligence and records of that diligence—do not provide any benefit to the end client and add duplication, delay, cost and inefficiency.

The Marketing Rule requires advisers providing hypothetical performance in sales material to comply with robust disclosure and other requirements which provide strong guardrails for investors. Advisers must:

1. *Policies and Procedures*: Adopt and implement policies and procedures reasonably designed to ensure any hypothetical performance is relevant to the intended audience’s likely financial situation and investment objectives;
2. *Disclosure of Criteria/Assumptions Used*: Provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the hypothetical performance; and
3. *Disclosure of Risks/Limitations of Use in Investment Decisions*: Enable the intended audience, by providing (or, if the intended audience is a private fund investor, provide or offer to provide promptly,) sufficient information to understand the risks and limitations of using such hypothetical performance in making investment decisions.⁹

Like the limitations FINRA expressed in the Proposal, the SEC noted in the adopting release for the Marketing Rule that advisers “generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation,” because RIAs would have trouble forming expectations about the recipients’ financial situations or investment objectives.¹⁰

FINRA’s requirements in the Proposal would require broker-dealers to independently rederive target returns and projections already subject to the Marketing Rule requirements, two layers of review without corresponding investor benefit. Consequently, we recommend that the SEC direct FINRA to delete this requirement, or at a minimum, clarify that the “reasonable basis” requirement for hypothetical performance presentations from registered investment advisers means that such information is subject to normal diligence

⁹ 17 CFR 275.206(4)-1(d)(6). In addition, other key principles embedded in the Marketing Rule require communications to be fair and balanced, describe material risks and benefits of the investment and not be materially misleading. 17. 275.206(4)-1(a)

¹⁰ Marketing Rule Adopting Release, available at <https://www.sec.gov/files/rules/final/2020/ia-5653.pdf> at page 220.

review and documentation of that review and does not require *de novo* recalculations of hypothetical performance by the broker-dealer.

D. Update FINRA guidance regarding internal rate of return (“IRR”) by revoking that portion of Regulatory Notice 20-21

FINRA provided guidance in 2020 regarding the calculation and use of IRR in communications with the public alongside other topics related to Rule 2210. Included in that guidance were conditions and prohibitions on certain uses of IRR that are affected by the Proposal, in addition to being outdated. We recommend that the Commission direct FINRA to revoke the prior guidance on IRR and issue updated guidance that specifies for both institutional and retail customers that: (1) IRR may be presented for funds with unrealized investments, (2) compliance is not limited to a single GIPS-based methodology, and (3) any reasonable, industry-accepted IRR methodology may be used for both categories of investors. Naturally, the broker-dealer would continue to include sufficient disclosure tuned to the sophistication of the audience consistent with its best-interest duties.

II. Conclusion

Despite FINRA’s progress, critical differences between the proposed Rule 2210 framework and the Marketing Rule remain and should be corrected. These differences risk perpetuating a fragmented regulatory regime in which identical marketing materials are subject to divergent standards depending solely on the regulatory status of the intermediary distributing them. This outcome undermines regulatory efficiency, increases compliance costs, and provides no corresponding investor protection benefit. Dually registered firms, in particular, should not be required to maintain two separate regulatory frameworks for the same investor-facing materials.

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We appreciate the opportunity to provide our comments to the Commission regarding the FINRA Proposal, and we would be pleased to meet with the Commission, FINRA and their staff to discuss our comments. If the staff has questions or comments, please do not hesitate to contact Jill R. Whitelaw at JWhitelaw@mfaalts.org or the undersigned at Jhad@mfaalts.org with any questions regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han
Chief Legal Officer and Head of Global Regulatory Affairs
MFA

cc: Jamie Selway, Director, Division of Trading and Markets
Brian Daly, Director, Division of Investment Management