September 11, 2026

Via Electronic Mail: pubcom@finra.org

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

Re: Regulatory Notice 26-14 – Request for Comment on Proposed Changes to Modernize FINRA Rule 2210 (Communications with the Public)

Dear Ms. Mitchell:

MFA[1] appreciates the opportunity to submit comments on Regulatory Notice 26-14 (the "Notice"), in which FINRA requests comment on proposed changes to modernize Rule 2210 (Communications with the Public). MFA previously submitted comments to FINRA and to the U.S. Securities and Exchange Commission ("Commission" or "SEC") on FINRA's related proposal to permit projected performance and targeted returns in broker-dealer communications with the public (File No. SR-FINRA-2026-004) (the "Projections Proposal").[2] We appreciate that FINRA responded to certain of those comments in its proposed Partial Amendment No. 1 to the Projections Proposal, including by eliminating the proposed "reasonable basis" standard and related recordkeeping requirement, as discussed below.[3] Many of the points raised in our prior comment letter remain unaddressed, however, and the broader modernization effort reflected in the Notice presents an important opportunity to resolve them. We write to reiterate and build on those comments – in particular, our

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[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 as updated by a Commission Order pursuant to Section 19(b)(2)(B) of the Securities Exchange Act, available at https://www.sec.gov/files/rules/sro/finra/2026/34-105524.pdf (May 20, 2026) (together, the "Projections Proposing Release").

[3] 91 Fed. Reg. 41723 (Notice of Partial Amendment No. 1) and FINRA Letter to SEC on Extension No. 2 (filed July 21, 2026), noting extension until October 23, 2026.

recommendation that FINRA more closely align Rule 2210 with the definition of "hypothetical performance" under the Investment Advisers Act of 1940 (the "Advisers Act") when adviser-prepared materials are provided to a broker-dealer for ultimate distribution to the broker-dealer's clients. These comments are directly responsive to the Notice's requests for comment concerning harmonization with the standards applicable to investment advisers (Requests for Comment Nos. 5 and 6) and guidance (Request for Comment No. 7).

MFA supports FINRA's efforts 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 Adviser Marketing Rule (the "Marketing Rule")[4] permits investment advisers to provide all types of hypothetical performance (including targets and projections) to investors, FINRA Rule 2210 currently prohibits broker-dealers (and dual registrants) from providing the same information. Allowing broker-dealers to include target returns and projected performance in communications with the public is a constructive first step toward regulatory modernization, but it is incomplete without further alignment with the Marketing Rule. Investors increasingly engage with the same investment products through different intermediaries – including registered investment advisers, broker-dealers and dually registered firms – and giving less robust information to broker-dealer clients and clients of dually-registered firms undercuts regulatory consistency and fairness.

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

Consistent with the harmonization objectives stated in the Notice, and responsive to Requests for Comment Nos. 5, 6 and 7, MFA urges FINRA to:

- **Expand the scope of permitted hypothetical performance beyond projections and target returns** to fully align with the SEC's Marketing Rule;

[4] 17 CFR 275.206(4)-1.

- **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;
- **Confirm and preserve the elimination of the proposed "reasonable basis" and enhanced recordkeeping requirement**, which FINRA proposed to remove in Partial Amendment No. 1 to the Projections Proposal consistent with MFA's prior comment, and ensure that the remaining recordkeeping obligation concerning the source of a projection is consistent with ordinary due diligence and the Marketing Rule;
- **Update FINRA guidance regarding internal rate of return ("IRR") by revoking that portion of Regulatory Notice 20-21**[5], clarifying the uses and presentation of IRR to more flexibly conform to industry practices; and
- **Support the proposed alignment of the standard for communications containing recommendations** (Rule 2210(d)(7)) with the standard applicable to investment advisers' references to specific investment advice, as proposed in the Notice.

I. Discussion

As proposed to be amended by Partial Amendment No. 1, proposed Rule 2210(d)(1)(F)(iv) would permit broker-dealers to distribute materials that include projected performance and target returns subject to the following 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. *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; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions."

In Partial Amendment No. 1, FINRA proposed to (i) eliminate the initial proposal's "reasonable basis" standard and the related requirement to retain certain written records supporting the basis for the criteria used and assumptions made, and (ii) remove the express disclosure clauses requiring members to state

[5]Regulatory Notice 20-21 available at https://www.finra.org/rules-guidance/notices/20-21.

whether a projection or targeted return is net of anticipated fees and expenses and the reasons why it might differ from actual performance. FINRA separately added a recordkeeping requirement under Rule 2210(b)(4)(A)(iv) that members maintain information concerning the source of any projection of performance or targeted return. MFA appreciates these responsive changes, which are consistent with our prior comments, and addresses related issues below.

A. Expand Scope

The Projections Proposal applies only to projected performance and target returns, not other types of hypothetical performance permitted under the Marketing Rule, such as back-tested and model performance. Excluding these other types of hypothetical performance is unwarranted. Accordingly, per Request for Comment No. 6, we urge FINRA to fully align the scope of permitted hypothetical performance with the Marketing Rule.

Rule 2210's general standards 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.[6] In addition, 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.[7] 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 in the Projections Release that its proposed changes (allowing projections and targeted returns) provide additional sources of information for investors in their investment decision making. FINRA also highlighted institutional and other sophisticated investors in particular, who develop their own opinions regarding the future performance of an investment based on the multiple sources of information at their disposal.[8] 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

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[6]See Projections Proposing Release, footnote 45. See FINRA Rule 2210(d)(1) (general standards).

[7]Projections Proposing Release, page 75.

[8]Projections Proposing Release, page 76.

information about the same investments depending on the financial professional," this narrow approach may unwittingly undermine that goal.

We recommend that FINRA 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.[9]

B. Explicitly address carved-out and subset track records

The Projections Proposal does not address other types of performance information that are commonly used in private fund marketing material, and those types of information should be fully addressed in the proposed amendment. For example, private fund sponsors often prepare track records extracted 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 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 FINRA explicitly clarify that these types of extractions are permissible for broker-dealers to provide to their clients under Rule 2210.

C. Confirm the elimination of "Reasonable Basis" requirement in the Projections Proposal and track ordinary diligence requirements for the new source-recordkeeping

The new recordkeeping requirement should not re-introduce the "reasonable basis" basis standard that FINRA already properly eliminated via its proposed Partial Amendment No. 1. As FINRA previously observed, an express reasonable basis standard is unnecessary because Rule 2210's general content standards would preclude any unreasonable projections or targeted returns.

That reasoning should guide the recordkeeping requirement under Rule 2210(b)(4)(A)(iv) as well. If a private fund adviser is providing hypothetical performance to a broker-dealer (whether a projection, target or other hypothetical performance measure), the broker-dealer should be permitted to rely on the adviser-provided information, including disclosures, in conformity with the Marketing Rule.

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[9]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 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.

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.[10]

Like the limitations FINRA expressed in the Projections 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.[11]

Requiring broker-dealers to independently rederive target returns and projections already subject to the Marketing Rule requirements would impose two layers of review without corresponding investor benefit (while adding duplication, delay, cost and inefficiency). Consequently, we recommend that in applying the source-recordkeeping requirement under Rule 2210(b)(4)(A)(iv), FINRA clarify that where hypothetical performance presentations are provided by a registered investment adviser, the broker-dealer's obligation is satisfied by normal diligence review and documentation of that review, identifying the adviser as the source, and does not require de novo recalculation or re-derivation of the hypothetical performance by the broker-dealer.

[10] 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 CFR 275.206(4)-1(a).

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

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 Projections Proposal. Responsive to the Notice's Request for Comment No. 7 regarding what guidance FINRA should consider adding or updating, we recommend that FINRA 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.

E. Align the standard for communications containing recommendations (Rule 2210(d)(7)) with the Marketing Rule

MFA supports the Notice's proposal to delete the prescriptive provisions of Rule 2210(d)(7) and replace them with a general prohibition against referring to a past specific recommendation in a manner that is not fair and balanced, in reliance on Rule 2210's general content standards. This approach is consistent with the harmonization objectives MFA supports throughout this letter and would more closely align the broker-dealer standard with the standard applicable to investment advisers under the Marketing Rule. Responsive to Request for Comment No. 5, we encourage FINRA to adopt this alignment.

II. Conclusion

MFA welcomes FINRA's modernization initiative and appreciates the responsiveness reflected in Partial Amendment No. 1 to the Projections Proposal. Despite that progress, critical differences between the Rule 2210 framework and the Marketing Rule remain and should be corrected as part of this modernization effort. 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 FINRA regarding the Notice, and we would be pleased to meet with FINRA and its 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 JHan@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