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FINRA PROPOSES AMENDMENTS TO COMMUNICATIONS RULE TO PERMIT USE OF PROJECTIONS

FINRA'S PROPOSAL WOULD EXPAND INVESTOR ACCESS TO PERFORMANCE PROJECTIONS AND TARGETED RETURNS TO MORE CLOSELY ALIGN FINRA RULE 2210 WITH THE IA MARKETING RULE

The Financial Industry Regulatory Authority, Inc. ("FINRA") recently filed with the U.S. Securities and Exchange Commission ("SEC") proposed amendments (the "Proposed Amendments") to FINRA Rule 2210 (Communications with the Public) to permit a member, when certain conditions are met, to include certain projections or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in its communications.¹ The conditions are intended to help ensure that such projected performance or targeted returns have a reasonable basis, are accompanied by certain disclosures, and that members sharing such information have written policies and procedures reasonably designed to ensure the communications are relevant to the likely financial situation and investment objectives of their audience.

We provide an overview of the Proposed Amendments and related guidance in the Proposing Release.

BACKGROUND

The Stayed Rule Change

In November 2023, FINRA proposed amendments to FINRA Rule 2210, which would have provided an exception to the general prohibition on the use of projections in member communications. The SEC approved these on July 19, 2024 (the "Stayed Rule Change").² However, on July 26, 2024, the SEC notified FINRA that it would review the action and that the approval order was stayed until the SEC ordered otherwise.³

Following the Stayed Rule Change, FINRA further evaluated both the need for an exception and the comments received in response to the Stayed Rule Change. Based on this review, FINRA concluded that greater alignment with the "hypothetical performance" provisions of the SEC's marketing rule applicable to SEC-registered investment advisers (the "IA Marketing Rule")⁴ would be helpful. This would provide investors with additional information while harmonizing regulatory approaches and reducing any potential investor confusion. The Proposed Amendments would:

- Eliminate thresholds that set limits as to which investors may receive projections of performance and targeted returns, and instead rely on the rule's conditions to ensure such communications are only made available to investors who have the financial expertise and resources to understand the risks and limitations associated with this information;

- Eliminate supplementary material guidance regarding the factors a member should consider when forming a reasonable basis for projections and targeted returns—although FINRA states that members may consider those factors when making determinations;
- Remove the requirement that any communications prominently disclose both the hypothetical nature of any projected performance or targeted return and that there is no guarantee that the projection of performance or targeted return will be achieved; and
- Remove the express prohibition on basing projections on hypothetical back-tested performance.

Current Regulatory Framework

FINRA Rule 2210 imposes specific communications-related requirements on members related to review, approval, filing, and recordkeeping. The rule also establishes principles-based content standards for member communications. As part of the content standards, FINRA Rule 2210(d)(1)(F) generally prohibits communications that predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.⁵ This provision generally precludes members from providing projected performance or targeted returns in communications distributed to investors. FINRA has stated that FINRA Rule 2210(d)(1)(F)'s general prohibition on projections of performance is intended to protect investors who may lack the capacity to understand the risks and limitations associated with projected performance.

Rationale for the Proposed Amendments

FINRA has acknowledged that institutional investors request projected performance or targeted returns to help make informed investment decisions. FINRA also has acknowledged that projected performance information may be useful for investors that either have the financial expertise to evaluate investments and to understand the assumptions and limitations associated with such projections, or that have access to financial professionals who possess this expertise. However, in light of FINRA Rule 2210(d)(1)(F)'s general prohibition on projections of performance, "these investors cannot obtain a member's potentially different and valuable perspective."⁶ Additionally, the prohibition creates an incentive for issuers to avoid the FINRA member/broker-dealer channel to offer securities and, instead, either use other intermediaries or market securities directly to potential investors.

OVERVIEW OF THE PROPOSED AMENDMENTS

The Proposed Amendments would add a new exception under FINRA Rule 2210(d)(1)(F)(iv) to the general prohibition on projections applicable to communications that project performance or provide targeted returns for a security, securities portfolio, asset allocation, or other investment strategy, provided a member satisfies the following three conditions.

Conditions Imposed by the Proposed Amendments

1. Written Policies and Procedures

The member must adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the intended audience's likely financial situation and investment objectives. This requirement is nearly identical to the requirement imposed by the IA Marketing Rule on investment advisers that use hypothetical performance.

The Proposed Amendments do not mandate how a member must satisfy this requirement, providing members with flexibility. Accordingly, for purposes of this condition, a member is not required to know the actual financial situation or investment objectives of each investor receiving the communication. Rather, members may comply with this condition by grouping investors into categories or types. Additionally, members may rely on past experiences with particular types of investors and consider whether particular investors have previously expressed interest or invested in similar securities. Ultimately, however, FINRA believes that communications containing projections or targeted returns should only be distributed if the member reasonably believes the investors have the financial expertise and resources to understand the risks and limitations of such presentations.

FINRA believes that this condition is important to ensure that members focus on the relevance of communications to their intended audience. FINRA notes the Proposed Amendments would generally prohibit members from including performance projections or targeted returns in communications directed to mass audiences or intended for general circulation—including general retail investor audiences. FINRA also cited Regulation Best Interest⁷ as further protection if a member is recommending a securities transaction or an investment strategy to retail investors.

2. Reasonable Basis Determination

The member must have a reasonable basis for the criteria and assumptions used to calculate the projected performance or targeted return, and maintain written records supporting such criteria and assumptions. The Proposed Amendments do not prescribe how a member should establish a reasonable basis, nor do they mandate a particular methodology for members or third parties whose projections or targeted returns appear in member communications.⁸ Members must make a facts-and-circumstances determination and consider information that is available to determine whether there is a reasonable basis for the projection or targeted return.

FINRA believes it is important for members to consider appropriate factors when forming such a reasonable basis and provides the following factors that members may consider in forming their reasonable basis determinations:

- Global, regional, and country macroeconomic conditions;
- In the case of a single security issued by an operating company, the issuing company's operating and financial history;
- The industry's and sector's current market conditions and the state of the business cycle;
- The quality of the assets included in a securitization; and
- The appropriateness of selected peer-group comparisons.⁹

Unlike the Stayed Rule Change, the Proposed Amendments do not include supplementary material listing factors that members should consider in forming their reasonable basis determinations, which FINRA said it removed to "avoid confusion." However, FINRA said that members may still consider those factors when making their determinations, including:

- Documented fact-based assumptions concerning the future performance of capital markets;
- If available, reliable multi-factor financial models based on macroeconomic, fundamental, quantitative, or statistical inputs, taking into account the assumptions and potential limitations of such models, including the source and time horizon of data inputs;
- The reliability of research sources;
- The historical performance and performance volatility of the same or similar asset classes;

- For managed accounts or funds, the past performance of other accounts or funds managed by the same investment adviser or sub-adviser, provided such accounts or funds had substantially similar investment objectives, policies, and strategies as the account or fund for which the projected performance or targeted returns are shown;
- For fixed-income investments and holdings, the average weighted duration and maturity;
- The impact of fees, costs, and taxes; and
- Expected contribution and withdrawal rates by investors.¹⁰

FINRA Rule 2210(d)(1)'s content standards apply to all member communications distributed or made available to investors, whether or not the member created the communication. As such, a member wishing to use a third party's (such as an issuer's or its sponsor's/manager's) projected performance or targeted returns must obtain enough information to form a reasonable basis as to the third party's assumptions and underlying criteria. However, if a member has reason to believe that the third party's model or software producing the data is not sound, the member must not use that third party's product.¹¹

The Proposed Amendments require members to retain written records supporting their reasonable basis determination, but do not mandate that members obtain and maintain third-party records with respect to a third-party projection. In this regard, although the records supporting a member's reasonable basis determination may, in some circumstances, be third-party records, members retain the flexibility to determine whether the circumstances of a particular projection or targeted return would require the acquisition and retention of third-party records to support the determination.

3. Disclosures

The member must provide sufficient information to enable the intended audience to understand:

- (1) The criteria and assumptions used to calculate the projected performance or targeted return, including whether such projections are net of anticipated fees and expenses; and
- (2) The risks and limitations of relying on projected performance or targeted returns when making investment decisions, including reasons why actual performance may differ from projections.

FINRA expects members to provide a general description of the methodology used sufficient to enable investors to understand the basis of the methodology, as well as the assumptions underlying the projection or targeted return. This requirement is not intended to prescribe a particular methodology or calculation of such performance or require that a member disclose proprietary or confidential information regarding its methodology and criteria.

ALIGNMENT WITH THE IA MARKETING RULE

According to FINRA, the Proposed Amendments are generally consistent with the IA Marketing Rule, however, some differences remain between the two rules, including:

- The Proposed Amendments are intentionally narrower than the IA Marketing Rule's provisions on hypothetical performance. The IA Marketing Rule covers hypothetical performance broadly, including performance derived from model portfolios, back-tested strategies applied to historical data from periods when the strategy was not actually used, and targeted or projected returns for any portfolio or investment advisory services. By contrast, the Proposed Amendments address only two categories: (i) targeted returns, which reflect aspirational

performance goals for an investment or strategy; and (ii) projections of performance, which estimate future performance based on historical data and assumptions, typically through mathematical modeling.¹²

- The Proposed Amendments expressly require a member to have a reasonable basis for the criteria and assumptions used in calculating projected performance or targeted returns, and to retain written records supporting that basis. Conversely, the IA Marketing Rule does not contain an express reasonable basis requirement for hypothetical performance, although it does require all advertising to be fair and balanced and to meet other hypothetical performance standards.
- The Proposed Amendments require a member to disclose, as part of a projection's or targeted return's risks and limitations, the reasons why projected performance or targeted returns might differ from actual performance. By contrast, the IA Marketing Rule requires a registered investment adviser to provide sufficient information for the intended audience to understand the criteria, assumptions, risks, and limitations of using hypothetical performance in making investment decisions.

ANTICIPATED TIMING

The SEC published notice of the Proposed Amendments in the Federal Register on February 25, 2026, and has until April 13, 2026, to approve or disapprove the Proposed Amendments, or to institute proceedings, with potential extensions up to 90 days. If the SEC approves the Proposed Amendments, FINRA will announce the implementation date in a regulatory notice. FINRA stated that it intends to withdraw the Stayed Rule Change if the SEC approves the Proposed Amendments.

CONCLUSION

The Proposed Amendments represent a welcome shift in FINRA's approach to performance projections and targeted returns in member communications. By more closely aligning with the IA Marketing Rule, the Proposed Amendments should reduce investor confusion, enable investors to receive additional information when making investment decisions, and achieve greater regulatory harmonization between broker-dealers and investment advisers.



The Free Writings & Perspectives, or FW&Ps, blog provides news and views on securities regulation and capital formation. The blog provides up-to-the-minute information regarding securities law developments, particularly those related to capital formation. FW&Ps also offers commentary regarding developments affecting private placements, mezzanine or "late stage" private placements, PIPE transactions, IPOs and the IPO market, new financial products and any other securities-related topics that pique our and our readers' interest. Our blog is available at: www.freewritings.law.

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¹ [Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 \(Communications with the Public\)](#), Securities Exchange Act of 1934 ("Exchange Act") Release No. 104877 (Feb. 20, 2026), 91 FR 9308 (Feb. 25, 2026) (SR-FINRA-2026-004) (the "Proposing Release").

² [Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 2210 \(Communications with the Public\) To Permit Projections of Performance in Institutional Communications and Specified Communications to Qualified Purchasers and Knowledgeable Employees](#), Exchange Act Release No. 100561 (Jul. 19, 2024), 89 FR 60461 (Jul. 25, 2024) (SR-FINRA-2023-016) (the "Stayed Rule Change Adopting Release").

³ [Letter from J. Matthew DeLesDernier, Deputy Secretary, SEC, to Meredith Cordisco, Associate General Counsel, FINRA](#) (Jul. 26, 2024).

⁴ See Rule 206(4)-1 under the Investment Advisers Act of 1940. The IA Marketing Rule addresses, among other things, the inclusion of performance in an advertisement, including a general prohibition on the presentation of hypothetical performance information unless certain conditions are met. Specifically, in addition to certain general requirements related to fair and balanced presentation of information in investment adviser advertisements, the rule's conditions further require investment advisers to: (1) adopt policies and procedures reasonably designed to ensure the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience; (2) provide sufficient information to enable the investor to understand the criteria and assumptions made in calculating such hypothetical performance; and (3) provide (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

⁵ Currently, FINRA Rule 2210(d)(1)(F) contains exceptions for (i) hypothetical illustrations of mathematical principles, (ii) investment analysis tools and (iii) price targets in research reports on debt or equity securities. Additionally, certain projections regarding securities futures and options are permitted pursuant to exceptions set forth in FINRA Rules 2215(b)(3) and 2220(d)(3), respectively. Unless one of these three exceptions applies, a member's communications cannot predict or project performance.

⁶ Proposing Release at 8.

⁷ Rule 15I-1 under the Exchange Act.

⁸ FINRA did cite FINRA Rules 2210 and 2241 as precedent for requiring a reasonable basis determination for including a price target in a research report and also Regulation S-K, Item 229.10(b) for management's projections of future economic performance being required to have a reasonable basis. See Proposing Release at pp. 16-17.

⁹ Proposing Release at pp. 17-18.

¹⁰ Stayed Rule Change Adopting Release at 60465.

¹¹ Proposing Release at pp. 20-21.

¹² The exclusion of back-tested, or pre-inception performance, data from the Proposed Amendments reflects FINRA's long-standing position that back-tested data is inappropriate in retail communications, although allowed in institutional communications under certain circumstances.