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## AMENDMENTS TO FINRA RULE 2210 PERMIT USE OF PROJECTED PERFORMANCE AND TARGETED RETURNS IN BROKER-DEALER COMMUNICATIONS SUBJECT TO SPECIFIED CONDITIONS

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On October 15, 2026, the Securities and Exchange Commission ("SEC") approved amendments to Rule 2210 (Communications with the Public) of the Financial Industry Regulatory Authority, Inc. ("FINRA"), allowing member firms to project performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy in communications with the public, subject to specified conditions (the "Amendments").<sup>1</sup> Such conditions include (i) adopting and implementing written policies and procedures reasonably designed to ensure the communication is relevant to the likely financial situation and investment objectives of its intended audience, (ii) providing sufficient disclosure regarding the criteria and assumptions underlying the projected performance or targeted return and the risks and limitations of using the projected performance or targeted return in making investment decisions and (iii) maintaining records concerning the source of the projected performance or targeted return.

The Amendments further align the use of projected performance and targeted returns by broker-dealers under FINRA Rule 2210 with the use of hypothetical performance by SEC-registered investment advisers under Rule 206(4)-1 under the Investment Advisers Act of 1940 (the "Marketing Rule").

However, FINRA did not, at this time, expand the scope of the Amendments to include additional categories of performance information, such as back-tested, model portfolio, related and extracted performance, thereby leaving a gap between FINRA Rule 2210 and the Marketing Rule. Broker-dealers must continue to rely on existing guidance in order to share this type of information with certain sophisticated investors under certain circumstances. Communications that contain both back-tested performance and projected performance and targeted returns must continue to be reviewed for compliance with applicable rules and guidance.

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<sup>1</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend FINRA Rule 2210 (Communications With the Public), Exchange Act Release No. 106675, 91 Fed. Reg. 66371 (Oct. 20, 2026), <https://www.federalregister.gov/documents/2026/10/20/2026-21393/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-approving-a-proposed> (the "Release").

## BACKGROUND

FINRA Rule 2210 imposes restrictions on the content of a member's communications with the public. The general content standards in paragraph (d)(1) of the rule require, among other things, that all member communications be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts, and that members not omit material facts or make false, exaggerated, unwarranted, promissory or misleading statements or claims, and consider the nature of the audience to which the communication will be directed and provide details and explanations appropriate to the audience.

FINRA Rule 2210(d)(1)(F) prohibits communications that predict or project performance, imply that past performance will recur, or make any exaggerated or unwarranted claim, opinion or forecast. FINRA has long interpreted this prohibition to cover both projections of performance and targeted returns. This prohibition, however, does not apply to communications that contain:

- Certain hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy;
- Investment analysis tools, or written reports produced by such tools, that meet the requirements of FINRA Rule 2214;<sup>2</sup> and
- Certain price targets in research reports on debt or equity securities.

FINRA explained that some investors, including institutional and other sophisticated investors, request projected performance or targeted returns, which they can obtain from registered investment advisers, unregistered intermediaries and issuers, but not, currently, from broker-dealers. This disparity can incentivize issuers to avoid offering securities through broker-dealers and can cause investor confusion.

## THE AMENDMENTS

The Amendments add a fourth exception to FINRA Rule 2210(d)(1)(F) to permit member communications to project performance or provide targeted returns with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, subject to the conditions described below.

## WRITTEN POLICIES AND PROCEDURES

FINRA members that communicate projected performance or targeted returns 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 its intended audience. This requirement is consistent with a corresponding requirement under the Marketing Rule with respect to the use of hypothetical performance in advertisements. FINRA noted that, under such policies and procedures, these communications should be distributed only to investors whom a member reasonably believes have access to resources to

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<sup>2</sup> The Marketing Rule has a similar exception from the rule's definition of "hypothetical performance."

independently analyze the information and who have the financial expertise to understand the risks and limitations of such presentations.

Importantly, the Amendments generally will not permit projected performance or targeted returns in communications to a mass audience or intended for general circulation<sup>3</sup>, including a general retail investor audience, as in such mass communications a member could not expect that the communication was applicable to their financial situation and investment objectives. As a result, FINRA expects that the Amendments will primarily impact institutional and other sophisticated investors and those members that serve them. Distributors of registered funds, interval funds, nontraded real estate investment trusts and nontraded business development companies will remain unable to use performance projections or targets in materials intended for mass retail distribution.

The Amendments are flexible as they do not prescribe how members must satisfy this requirement. Rather, members may tailor policies and procedures to suit their investor base and business models. This approach mirrors the policies and procedures condition for hypothetical performance under the Marketing Rule.

FINRA declined to treat satisfaction of institutional suitability obligations under FINRA Rule 2111(b) as automatically satisfying the new requirement, noting that the Amendments apply to all communications, not only those to institutional customers or those made in connection with a recommendation. Members may, however, adopt dual-use policies and procedures that address both rules. Moreover, where projected performance or targeted returns are communicated to a retail customer with a recommendation, Regulation Best Interest will also apply.

## **DISCLOSURE REQUIREMENTS**

The Amendments require members that communicate projected performance or targeted returns to provide sufficient information to enable the intended audience to understand:

- The criteria used and assumptions made in calculating the projected performance or targeted return; and
- The risks and limitations of using the projected performance or targeted return in making investment decisions.

FINRA does not prescribe a calculation methodology, but expects a general description sufficient for the audience to understand the basis of the methodology and its underlying assumptions. In response to comments, and to further align the disclosure requirements with the Marketing Rule, FINRA removed the originally proposed requirement (i) from the first prong to disclose whether the calculation of the projected performance or targeted return is net of anticipated fees and expenses and (ii) from the second prong to include the reasons why the projected performance or targeted return might differ from actual

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<sup>3</sup> This is consistent with the Marketing Rule. Specifically, the SEC stated in the adopting release to the Marketing Rule: “We believe that advisers generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation. In that case, because the advertisement would be available to mass audiences, an adviser generally could not form any expectations about their financial situation or investment objectives.” Investment Adviser Marketing, Investment Advisers Act Release No. 5653, 86 Fed. Reg. 13024, 13083–84 (Mar. 5, 2021).

performance. FINRA stated that the general content standards, along with the Amendments' disclosure requirements as described above, will help ensure that investors have the information necessary to consider the risks and limitations of performance information.

Notably, although the above disclosure requirements are consistent with the disclosure requirements applicable to hypothetical performance under the Marketing Rule, FINRA declined to conclude that disclosures prepared in compliance with the Marketing Rule would always satisfy FINRA Rule 2210, observing that the phrasing of the two rules is not identical and that RIAs are subject to a separate regulatory regime. Therefore, it should not be assumed that Marketing Rule-compliant disclosures automatically meet FINRA's standard.

## **RECORDKEEPING REQUIREMENT; EXPRESS REASONABLE BASIS REQUIREMENT REMOVED**

As originally proposed, members would have been required to have a reasonable basis for the criteria and assumptions underlying any projected performance or targeted return and to retain written records supporting the basis for such criteria and assumptions. In response to comments, FINRA removed that requirement and instead amended the recordkeeping obligation under FINRA Rule 2210(b)(4)(A)(iv) to include information concerning the source of any projection of performance or targeted return used in a communication.

FINRA stated that an express reasonable basis requirement is not needed because the current general content standards preclude the communication of unreasonable performance projections or targeted returns. That is, the general content standards combined with the recordkeeping requirement effectively require members to substantiate the basis of any projection or target before it is communicated.

## **THIRD-PARTY PROJECTIONS**

For projected performance or targeted return information sourced from third parties, FINRA expects members to continue to meet the general content standards, noting that these standards prohibit a member 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. FINRA would not generally expect a member to independently verify all underlying criteria and assumptions, but would expect members to evaluate the source of the information, assess whether the available information in the projection is supported, and satisfy itself that the presentation meets the general content standards. Members would also be required to consider the availability of information from the third party and whether such information would be necessary for the member to satisfy its obligations under FINRA Rule 2210.

## DUAL REGISTRANTS

As described above, the Amendments only cover a subset of the types of hypothetical performance information covered by the Marketing Rule (for example, the Amendments do not cover back-tested or model portfolio performance). Moreover, the Amendments do not provide a safe harbor that expressly permits dual registrants to use communications prepared in compliance with the Marketing Rule. While FINRA stated that it would not foreclose the possibility of future amendments to address additional categories of performance information, and that it would consider providing additional guidance on the application of the Amendments to certain categories of information, at this time, broker-dealers, including dual registrants, must review communications that include projected performance or targeted return information under FINRA Rule 2210, independent of and separate from the Marketing Rule. As such, dual registrants will not be able to merely rely on their Marketing Rule policies and procedures to satisfy their obligations under FINRA rules.

## INTENDED AUDIENCE

FINRA declined to include a safe harbor for the types of recipients to whom a communication of projected performance or targeted return could be sent, such as certain high-net-worth-retail investors, certain accredited investors, institutional investors or qualified purchasers. Instead, as noted above, the Amendments are intended to provide members with flexibility to develop policies and procedures that best suit their investor base and business models. For example, FINRA stated that a member firm may wish to partly base its policies and procedures on its past experiences with particular types of investors who seek projected performance or targeted return information, group investors into categories or types, or restrict its intended audience to investors who have expressed interest or actually invested in particular types of securities.

## EFFECTIVE DATE

FINRA will announce the effective date in a Regulatory Notice. Until then, members continue to be subject to FINRA Rule 2210's existing requirements, including the current prohibition on performance projections and targeted returns.



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