The Asset Management Industry
SERVING INDIVIDUAL INVESTORS

Letter from the Investment Company Institute

March 18, 2026

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

Re: *Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 2210 (Communications With the Public) (File Number SR–FINRA–2026–004)*

Dear Ms. Countryman:

The Investment Company Institute[1] supports FINRA's proposed amendments to Rule 2210, which regulates communications with the public (the "rule").[2] The Proposal would allow FINRA members to provide communications with performance projections or targeted returns, subject to certain conditions.

We believe that performance projections and targets, subject to proper investor protection guardrails, can help inform investors' decision-making processes. While we recommend removing the proposed "reasonable basis" condition in light of the rule's existing protections and the other proposed conditions, the Proposal effectively balances these policy considerations overall, and it is welcome progress. We conclude by strongly recommending that FINRA further align its rules more fully with the performance standards in the SEC's 2020 marketing rule for investment advisers.[3]

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[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $44.7 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional $10.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI Associate Members include service providers to member firms and CIT trust companies. ICI has offices in Washington DC, Brussels, and London.

[2] Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public), Exchange Act Release No. 104877, 91 Fed. Reg. 9308 (Feb. 25, 2026) (the "Proposal"), available at https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03705.pdf.

[3] *See* Investment Adviser Marketing, SEC Release No. IA-5653, 86 Fed. Reg. 13024 (Mar. 5, 2021), available at https://www.govinfo.gov/content/pkg/FR-2021-03-05/pdf/2020-28868.pdf.

I. Background and Summary of Proposal

Currently, 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," subject to specific narrow exceptions.[4] Below we describe FINRA's previous proposals on this topic and the latest proposal.

A. Prior FINRA Proposals and the SEC Marketing Rule

In recent years, FINRA has attempted to loosen the rule's general prohibition on communications that predict or project performance, first in 2017.[5] In 2020, the SEC adopted its marketing rule, which updated rules that govern investment adviser marketing. The final SEC marketing rule and related guidance conditionally allow hypothetical performance in advertisements.[6] We understand that FINRA delayed its 2017 proposal in large part so that it could take into account the final SEC marketing rule, and ICI agreed with this approach.

In 2023, FINRA issued a revised proposal that would have conditionally permitted "[a] communication that project[ed] the performance or provid[ed] a targeted return with respect to a security or asset allocation or other investment strategy."[7] This proposed exception would have been limited to: (i) institutional communications, or (ii) communications that were distributed or made available only to qualified purchasers and that promoted or recommended

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[4] The rule permits: a hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and a price target contained in a research report on debt or equity securities, subject to certain conditions.

[5] FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public, Regulatory Notice 17-06 (February 2017) ("Regulatory Notice 17-06"), available at www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf. That 2017 proposal conditionally would have permitted customized hypothetical investment planning illustrations that project performance of an asset allocation or other investment strategy (but not an individual security). ICI generally supported FINRA's 2017 proposal while offering comments to further improve it. *See* ICI Letter to FINRA (Mar. 27, 2017), available at https://www.finra.org/sites/default/files/notice_comment_file_ref/17-06_ICI_comment.pdf.

[6] Under the SEC marketing rule, "hypothetical performance" includes model performance, back-tested performance, and targeted or projected performance returns. The SEC marketing rule permits an adviser to advertise hypothetical performance, provided the adviser: (i) adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provides sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

[7] Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 2210 (Communications With the Public) To Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications, Exchange Act Release No. 98977, 88 Fed. Reg. 82482 (Nov. 24, 2023), available at https://www.govinfo.gov/content/pkg/FR-2023-11-24/pdf/2023-25881.pdf.

specified non-public offerings.[8] The use of projections or targets in retail communications would have continued to be almost entirely prohibited.

ICI generally supported the 2023 proposal as a step in the right direction toward harmonizing FINRA's requirements with the SEC marketing rule standards, and we preferred it to the 2017 proposal.[9] We recommended, however, that any final rule also permit these communications to retail investors and streamline the proposal's conditions to further align with the SEC marketing rule. The 2023 proposal was approved by the SEC Division of Trading and Markets but was subsequently stayed indefinitely by the Commission.

B. Summary of the 2026 Proposal

The Proposal would permit "[a] communication that projects the performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy," provided that a member:

- adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience;
- has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retains written records supporting the basis for these criteria and assumptions; and
- provides sufficient information to enable the intended audience to understand:
    - 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

[8] In early 2024, FINRA issued a proposed amendment to the 2023 proposal that would have modestly expanded its scope to permit inclusion of performance projections or targets in communications to "knowledgeable employees" involving certain private placements. *See* Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 2210 (Communications With the Public) To Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications, Exchange Act Release No. 99588, 89 Fed. Reg. 14728 (Feb. 28, 2024), available at www.govinfo.gov/content/pkg/FR-2024-02-28/pdf/2024-04072.pdf.

[9] Letter from Dorothy M. Donohue, Deputy General Counsel, and Matthew Thornton, Associate General Counsel, ICI, to Sherry R. Haywood, Assistant Secretary, Securities & Exchange Comm'n (Dec. 15, 2023), available at https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-314280-819322.pdf; Letter from Dorothy M. Donohue, Deputy General Counsel, and Matthew Thornton, Associate General Counsel, ICI, to J. Matthew DeLesDernier, Deputy Secretary, Securities & Exchange Comm'n (Mar. 15, 2024), available at https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-447019-1142723.pdf.

- 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.

Existing investor protection-oriented requirements would also continue to apply, including the rule's general content standards, supervisory requirements, and approval requirements for retail communications.

II. Comments on the Proposal

A. Projections and Targets Can Help Investors.

We still believe that the current rule's near-prohibition on projected performance is unduly restrictive and prevents FINRA members from helping investors better understand the risk and return characteristics of investments and portfolios. For instance, projections can highlight important investment concepts such as variability of investment returns, differences in rates of return among asset classes, ways in which asset classes with different performance correlations might be combined to reduce overall portfolio volatility, and the benefit of compound returns over long time horizons. More tangibly, projections can be very useful to investors who are seeking to achieve future financial objectives (e.g., financing retirement or college education) and need assistance in determining how best to do so. While projections and targets can never be precise, when done responsibly, they at least provide an investor with a range of likely outcomes and indicate how such outcomes relate to their financial objectives. Projections are indispensable in providing investors with improved clarity around their investment-specific questions (e.g., "How much can I reasonably expect my investment portfolio to be worth when I retire?").

We also value investor protection. If projections are not done responsibly and investors rely on them too heavily, investors risk making decisions that could prove harmful. It is therefore appropriate for FINRA and the SEC to carefully calibrate the conditions on broker-dealers' or advisers' use of performance projections and targets to preserve their benefits while reducing risk of investor harm.

B. The Proposal Improves Upon the 2023 Proposal.

The Proposal improves upon the 2023 proposal in several key respects. First, the 2023 proposal would have limited the use of targets and projections to communications to specified sophisticated investors. This Proposal, like the SEC marketing rule, has no such threshold limitation on the audience for these communications. Hypothetical performance may help inform both institutional and retail investors who are evaluating various investment options to decide how best to achieve their financial objectives. We believe that this Proposal's conditions will adequately protect retail investors while allowing them to obtain the benefits of projections.

Second, the 2023 proposal would have required a communication to prominently disclose that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projection or target will be achieved. This Proposal explains that, upon further reflection, FINRA believes that the disclosure is unnecessary and potentially duplicative. ICI agrees—for this policy purpose, the third condition suffices—and supports the removal of this condition from the 2023 proposal.

Third, the 2023 proposal included Supplementary Material containing factors that a member should consider when forming its reasonable basis. FINRA states that the Supplementary Material caused confusion among commenters, and FINRA has removed it from this Proposal. FINRA notes that members would still be free to consider those, as well as other, factors when making their reasonable basis determinations. ICI agrees with this omission for the reasons FINRA provides.

Finally, the 2023 proposal specifically prohibited members from basing projected performance or a targeted return on hypothetical back-tested performance or the prior performance of a portfolio or model created solely for the purpose of establishing a track record. This Proposal does not contain those express prohibitions, and ICI supports this additional flexibility regarding potential sources for projections.

C. The Proposed "Reasonable Basis" Condition Is Duplicative and Unnecessary.

As noted above, FINRA has prudently streamlined the proposed conditions, and we greatly appreciate FINRA's consideration of public comments. We view this Proposal, like the prior related proposals, as an incremental step toward harmonization with the SEC standards. Even incremental harmonization can help alleviate compliance challenges and investor confusion that may be caused by differing regulatory standards.

That said, the regulatory regimes would still differ if this Proposal were adopted, so those challenges and confusion would still arise in some circumstances. Although this Proposal better aligns with the SEC marketing rule, they still do not align exactly and, in particular, FINRA has retained the proposed "reasonable basis" standard. We would once again note that this condition is not present in the SEC marketing rule's conditions for the inclusion of hypothetical performance. We recommend that FINRA remove the "reasonable basis" condition. As we commented on the 2023 proposal, if registered fund materials are created by the fund (or its distributor) and a third-party broker wishes to use them, it could be difficult for the third-party broker to establish that it "has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return" and "retain . . . written records supporting the basis for such criteria and assumptions."

We believe that the first (policies and procedures) and third (disclosures) proposed conditions, combined with the rule's existing investor protections, will adequately protect investors. FINRA staff has stated, in response to comments on the 2023 proposal, that "[r]equiring a reasonable

basis ensures that the member acts with reasonable diligence and good faith."[10] But Rule 2210(d)(1)(A) already requires that "[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." And Rule 2210(d)(1)(B) prohibits members from making "any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication." Those existing requirements (and others in Rule 2210(d)(1)), along with the two other proposed conditions, will ensure that investors are adequately informed and protected.

If FINRA moves forward with the proposed "reasonable basis" condition, additional guidance would be helpful and provide comfort. For example, a projection or target may have a reasonable basis when it is created, but market conditions may change, or a strategy may not perform exactly as expected. FINRA should clarify that, in such circumstances, it would not second-guess the basis of a projection or target simply because it did not, in hindsight, turn out to be accurate. Such second-guessing would be inappropriate and discourage members from providing potentially useful information to investors.

III. Next Steps for Modernization and Alignment

ICI appreciates the Proposal's incremental improvements. Given this Proposal's long and winding nine-year path, and subject to our comments in this letter, we support its adoption. At the same time, we strongly encourage FINRA to continue aligning Rule 2210 with the SEC's standards. We hope that this Proposal and the FINRA Forward initiative are just the beginning.

ICI has long supported harmonization of the FINRA and SEC marketing standards. As we explained in our June 2025 letter on the modernization of Rule 2210,[11] having differing regulatory frameworks applicable to funds and advisers creates a compliance challenge for our members. Even slight differences in applicable standards are difficult to operationalize and potentially confusing to investors. FINRA acknowledged this in the proposing release, noting that investor confusion can arise as a result of "investors receiving different information about the same investments depending on the financial professional with whom they engage."[12] We believe that this Proposal, like the 2023 proposal, is a step in the right direction toward harmonization. We also continue to believe that further alignment would be appropriate, including with respect to related performance, as well as hypothetical back-tested and model performance.

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[10] Letter from Meredith Cordisco, FINRA, to Vanessa Countryman, SEC, File No. SR-FINRA-2023-016: Proposed Rule Change to Permit Projections of Performance in Institutional Communications and Specified Communications to Qualified Purchasers (July 17, 2024), available at https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-491703-1411666.pdf.

[11] Letter from Erica L. Evans, Assistant General Counsel, ICI to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (June 10, 2025), available at https://www.ici.org/system/files/2025-06/25-cl-finra-rule-modernization.pdf.

[12] Proposal at 9309.

If FINRA wishes to continue aligning its standards incrementally, we strongly encourage turning next to related performance. In the Proposal, FINRA states that projections are "often based on historical data and assumptions" and are "commonly established through mathematical modeling." Related performance *is* historical data and reflects performance actually achieved by the adviser, albeit for a different portfolio or group of portfolios. FINRA currently permits the inclusion of related performance in institutional communications, subject to certain conditions.[13] We believe that, with proper disclosures and investor protection considerations, related performance could also help retail investors evaluate their investment decisions.[14]

We appreciate the opportunity to comment on the Proposal. If we can be of assistance in any way, please contact us at erica.evans@ici.org or matt.thornton@ici.org.

Sincerely,
/s/ Matthew Thornton
Matthew Thornton
Deputy General Counsel

/s/ Erica Evans
Erica Evans
Assistant General Counsel

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

Joseph Savage, Vice President and Associate General Counsel, Office of the General Counsel, FINRA
Ira Gluck, Director, Advertising Regulation, FINRA

[13] Interpretive Letter to Edward P. MacDonald, Hartford Funds Distributors, LLC, FINRA (May 12, 2015), available *at* https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-edward-p-macdonald-hartford-funds-distributors-llc; Interpretive Letter to Clair Pagnano, K&L Gates LLP, FINRA (June 9, 2017), available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-clair-pagnano-kl-gates-llp; Interpretive Letter to Jason P. Ellison, Foreside Fund Services, LLC, FINRA (Aug. 31, 2020), available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-jason-ellison-foreside-fund-services.

[14] Presumably, this Proposal would, depending on the circumstances, allow members to use related performance to help inform a projection or target. In contrast, members could not directly include the related performance in retail communications. We see this as an anomalous result.