SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106675; File No. SR-FINRA-2026-004]

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)

October 15, 2026.

I. Introduction

On February 10, 2026, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend FINRA Rule 2210 (Communications with the Public) to allow a member broker-dealer ("member") 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 its communications with the public, subject to specified conditions.[3]

The proposed rule change was published for public comment in the Federal Register on February 25, 2026.[4] The comment period closed on March 18, 2026. The Commission received comment letters in response to the Notice.[5] On April 7, 2026, FINRA consented to extend until

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Exchange Act Release No. 104877 (Feb. 20, 2026), 91 FR 9308, 9313 (Feb. 25, 2026) (File No. SR-FINRA-2026-004) ("Notice"), https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03705.pdf. FINRA stated that projections of performance "reflect an estimate of the future performance of an investment or investment strategy, which is often based on historical data and assumptions . . . [and] are commonly established through mathematical modeling," and targeted returns "reflect the aspirational performance goals for an investment or investment strategy." Id.

4 Notice.

5 The comment letters received in response to the Notice are available at https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-004.

May 26, 2026, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On May 18, 2026, the Commission received a letter from FINRA stating, among other things, that it anticipated submitting a response to comments, as well as amendments to the proposed rule change.[7] On May 20, 2026, the Commission published an order instituting proceedings to determine whether to approve or disapprove the proposed rule change ("OIP").[8] The Commission received comment letters in response to the OIP.[9] On June 30, 2026, FINRA responded to the comment letters received in response to the Notice and OIP[10] and filed a partial amendment to the proposed rule change ("Partial Amendment No. 1").[11] The proposed rule change, as modified by Partial Amendment No. 1 (hereinafter referred to as the "proposed rule change" unless otherwise stated), was published for public comment in the Federal Register on July 7, 2026.[12] On July 21, 2026, FINRA consented to extend until October 23, 2026, the time period in which the Commission must approve or disapprove the proposed

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6 See letter from Joseph Savage, Vice President and Associate General Counsel, Office of General Counsel, FINRA, dated Apr. 7, 2026, https://www.finra.org/sites/default/files/2026-04/SR-FINRA-2026-004-Extension-5-26-2026.pdf.

7 Letter from David Driscoll, Associate General Counsel, Office of General Counsel, FINRA, dated May 18, 2026 ("FINRA Response I"), https://www.finra.org/sites/default/files/2026-05/SR-FINRA-2026-004-Response-to-Comments-20260518.pdf.

8 See Exchange Act Release No. 105524 (May 20, 2026), 91 FR 30750 (May 26, 2026) (File No. SR-FINRA-2026-004), https://www.govinfo.gov/content/pkg/FR-2026-05-26/pdf/2026-10365.pdf.

9 The comment letters received in response to the OIP are available at https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-004.

10 See letter from Joseph Savage, Vice President and Associate General Counsel, Office of General Counsel, FINRA, dated Jun. 30, 2026 ("FINRA Response II"), https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-913220-2799313.pdf.

11 Partial Amendment No. 1 is available on FINRA's website at https://www.finra.org/rules-guidance/rule-filings/sr-finra-2026-004.

12 See Exchange Act Release No. 105845 (Jul. 2, 2026), 91 FR 41723 (Jul. 7, 2026) (File No. SR-FINRA 2026-004) ("Notice II"), https://www.govinfo.gov/content/pkg/FR-2026-07-07/pdf/2026-13713.pdf.

rule change.[13] The Commission received comment letters in response to Notice II.[14] On October 14, 2026, FINRA responded to the comment letters received in response to Notice II.[15]

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA Rule 2210 generally prohibits communications with the public that predict or project performance.[16] As discussed below, there are three exceptions to this general prohibition; the proposed rule change would create a fourth exception in limited circumstances.

A. FINRA Rule 2210 (Communications with the Public)

Among other things, FINRA Rule 2210 imposes restrictions on the content of a member's communications with the public. For example, FINRA Rule 2210(d)(1) (General Standards) (hereinafter the "general content standards") requires, among other things, that: (1) 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 in regard to any particular security or type of security, industry, or service;[17] and (2) the member: (a) not omit any material fact or

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13 Letter from Joseph Savage, Vice President and Associate General Counsel, Office of General Counsel, FINRA, dated Jul. 21, 2026, https://www.finra.org/sites/default/files/2026-07/FINRA-2026-004-Extension2-20261023.pdf.

14 The comment letters received in response to Notice II are available at https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-004.

15 See letter from Joseph Savage, Vice President and Associate General Counsel, Office of General Counsel, FINRA, dated October 14, 2026 ("FINRA Response III"), https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-1093079-3839368.pdf.

16 See FINRA Rule 2210(d)(1)(F). FINRA interprets this prohibition to cover both projections of performance and targeted returns. Notice at 9309, 9310 n.29; see also FINRA Rule 2210 Frequently Asked Questions, Question D.7, https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation ("This prohibition [under Rule 2210(d)(1)(F)] extends to retail communications that include target returns to investors."); FINRA Regulatory Notice 20-21 at 4 (Jul. 1, 2020), https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-21.pdf (stating that retail communications concerning private placements may not project or predict returns to investors such as yields, income, dividends, capital appreciation percentages or any other future investment performance).

17 FINRA Rule 2210(d)(1)(A).

qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;[18] (b) not make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in the communication;[19] and (c) consider the nature of the audience to which the communication will be directed and provide details and explanations appropriate to the audience.[20]

The general content standards also prohibit a communication prepared by a member from predicting or projecting performance, implying that past performance will recur, or making any exaggerated or unwarranted claim, opinion, or forecast.[21] This general prohibition, however, does not apply to communications that contain: (1) certain hypothetical illustrations of mathematical principles;[22] (2) certain investment analysis tools or written reports produced by

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18 Id.

19 FINRA Rule 2210(d)(1)(B).

20 FINRA Rule 2210(d)(1)(E).

21 FINRA Rule 2210(d)(1)(F); but see, e.g., FINRA Rule 2215 (Communications with the Public Regarding Security Futures) (stating that members may include projected performance figures (including projected annualized rates of return) regarding securities futures products in communications subject to specified conditions enumerated in FINRA Rule 2215(b)(3)); FINRA Rule 2220 (Options Communications) (stating that members may include projected performance figures (including projected annualized rates of return) regarding options in communications subject to specified conditions enumerated in FINRA Rule 2220(d)(3)).

22 FINRA Rule 2210(d)(1)(F)(i) (stating that a member may communicate a hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy). FINRA stated that this exception applies to tools that serve the function of a calculator that computes the mathematical outcome of certain assumed variables without predicting the likelihood of either the assumed variables or the outcome (e.g., a calculator that computes a net amount of savings that an investor would earn over an assumed period of time with assumed variables of rates of returns, frequency of compounding, and tax rates). Notice at 9308.

such investment analysis tools;[23] and (3) certain price targets contained in research reports on debt or equity securities.[24]

B. The Proposed Rule Change

The proposed rule change would adopt a fourth exception to FINRA Rule 2210(d)(1)(F) to permit members' communications to project performance or provide targeted returns with respect to a security, a securities portfolio, or an asset allocation or other investment strategy (hereinafter, "projected performance or targeted returns"), subject to the conditions described, in turn, below.[25]

1. Written Policies and Procedures

The proposed rule change would require any member that communicates projected performance or targeted returns to adopt and implement 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 of the communication.[26] FINRA stated that, under such reasonably designed policies and procedures, a communication containing projected performance or targeted returns should only be distributed to investors whom a member reasonably believes have access to resources to independently analyze this information and who

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23 FINRA Rule 2210(d)(1)(F)(ii) (stating that a member may publish an investment analysis tool, or a written report produced by an investment analysis tool, that includes projections of performance provided it meets the requirements of FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools)). An "investment analysis tool" is "an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices." See FINRA Rule 2214(b).

24 FINRA Rule 2210(d)(1)(F)(iii) (stating that a member may communicate a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target).

25 Proposed FINRA Rule 2210(d)(1)(F)(iv).

26 Proposed FINRA Rule 2210(d)(1)(F)(iv)(a).

have the financial expertise to understand the risks and limitations of these types of presentations (referred to herein collectively as "investors who have the resources and financial expertise").[27] FINRA stated that the proposed rule change generally would not permit the inclusion of projected performance or targeted returns in communications for a mass audience or intended for general circulation, including a general retail investor audience, as in such mass communications, a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience.[28] The proposed rule change would not, however, prescribe the ways in which a member may satisfy the policies and procedures requirement; rather, it would provide members with flexibility to develop policies and procedures that best suit their investor base and business models.[29] 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 this 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.[30]

2. Disclosure Requirements

The proposed rule change would impose two disclosure-related obligations. Specifically, as originally proposed in the Notice, the proposal would have required any member that communicates projected performance or targeted returns to provide sufficient information to

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27 FINRA Response II at 10; FINRA Response III at 16; see Notice at 9310 (stating that a communication that contains projections of performance or targeted returns should only be distributed where the member reasonably believes the investors for whom that communication is intended have the financial expertise and resources to understand the risks and limitations of such presentations).

28 Notice at 9310-9311.

29 Id. at 9310.

30 Id. However, FINRA stated that the fact that an investor would be interested in high returns would not, by itself, mean that the projected performance or targeted returns are relevant to the likely financial situation and investment objectives of the intended audience. Id. at 9310 n.32.

enable the intended audience to understand: (1) 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;[31] and (2) 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.[32]

FINRA stated that the first prong of the disclosure requirement would not prescribe the methodology for calculating projected performance or targeted returns; rather, FINRA would expect that a member provide a general description of the methodology used sufficient to enable the intended audience to understand the basis for the methodology, as well as the assumptions underlying the projection or targeted return.[33] FINRA stated that, absent this required disclosure, it would be more likely that a projection of performance or targeted return would mislead a potential investor.[34] FINRA also stated that the second prong of the proposed disclosure requirement would help ensure that investors do not unreasonably rely on a projected performance or targeted return given their uncertainty and risks.[35]

In response to comments, however, FINRA amended the original proposal to remove from the first prong the proposed requirement that a member include in its disclosure whether its calculation of the projected performance or targeted return is net of anticipated fees and expenses,[36] and to remove from the second prong the proposed requirement that a member

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31 Notice at 9311-12 (describing then-proposed FINRA Rule 2210(d)(1)(F)(iv)(c)).

32 Id.

33 Id. at 9311.

34 Id.

35 Id. at 9312.

36 FINRA Response II at 14-15; Partial Amendment No. 1.

include in its disclosure reasons why the projected performance or targeted return might differ from actual performance.[37] FINRA stated that the general content standards, together with the proposed rule change's remaining disclosure requirements, would help ensure that investors receive the information necessary to consider the risks and limitations of such performance information.[38]

3. Reasonable Basis Requirement; Recordkeeping Requirement

As originally proposed in the Notice, the proposal would have required any member that communicates projected performance or targeted returns to have 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.[39] In response to comments, however, FINRA amended the original proposal to remove these requirements,[40] and instead proposed to amend 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 the communication.[41] As discussed further below, FINRA stated that an express reasonable basis requirement is unnecessary because FINRA Rule 2210's existing general content standards would preclude the communication of unreasonable performance projections or targeted returns.[42] FINRA also stated that the proposed recordkeeping requirement would be consistent with the other types of records currently required to be maintained pursuant to

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37 FINRA Response II at 14-15; Partial Amendment No. 1.

38 FINRA Response II at 15.

39 Notice at 9311 (describing then-proposed FINRA Rule 2210(d)(1)(F)(iv)(b)).

40 FINRA Response II at 12; Partial Amendment No. 1 at 5-6.

41 Proposed FINRA Rule 2210(b)(4)(A)(iv); Partial Amendment No. 1 at 7.

42 FINRA Response II at 12.

FINRA Rule 2210(b)(4) and would help regulators to evaluate members' compliance with the terms of the proposed rule change.[43]

III. Discussion and Commission Findings

After careful review of the proposed rule change, comment letters received, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[44] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[45]

The proposed rule change would create a new, reasonably tailored exception from FINRA Rule 2210's general prohibition on communications that predict or project performance. The proposed rule change would allow members to communicate projected performance or targeted returns, subject to requirements reasonably designed to protect investors and the public interest. In particular, the proposed rule change would, among other things, require members to: (1) adopt and implement 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; (2) provide sufficient information to enable the intended audience to understand: (a) the criteria used and assumptions made in calculating the projected performance

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43 See id. at 13; Partial Amendment No. 1 at 7.

44 In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

45 15 U.S.C. 78o-3(b)(6).

or targeted return, and (b) the risks and limitations of using the projected performance or targeted return in making investment decisions; and (3) maintain records including information concerning the source of any projection of performance or targeted return used in their communications.

As explained in detail below, the proposed conditions would help ensure that such communications are provided only to an appropriate audience of investors who have the resources and financial expertise and that such communications are provided with disclosures designed to support informed investment decision making. Further, the existing general content standards—when coupled with the proposed rule change's conditions—should help ensure that communications including projected performance and targeted returns are fair, balanced, and not misleading. Accordingly, and as explained in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act. The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

A. Scope of the Proposed Exception to the General Prohibition on Communications that Predict or Project Performance

As described above, the proposed rule change would permit members to communicate projected performance or targeted returns under certain conditions.[46] FINRA stated that some of its members' customers, including institutional investors and other sophisticated investors, request projected performance or targeted returns to help them make informed investment decisions, but FINRA Rule 2210 currently prohibits members from providing such information.[47] FINRA stated that, on the other hand, investors can obtain such performance

46 Proposed FINRA Rule 2210(d)(1)(F)(iv).

47 See Notice at 9309.

information from other market participants, including registered investment advisers,[48] unregistered intermediaries, and issuers.[49] FINRA stated that such different regulatory treatment can: (1) incentivize issuers to avoid offering securities through registered broker-dealers,[50] and (2) cause investor confusion because investors may receive different types of information about the same investments depending on the financial professional with whom they engage.[51] For these reasons, FINRA stated that an additional exception to the general prohibition on projecting or predicting performance in member communications is warranted.[52]

A number of commenters supported the proposed rule change.[53] These commenters stated that the proposed rule change would help investors make more informed investment

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48 Among other things, the Commission's Investment Adviser Marketing Rule ("IA Marketing Rule") addresses the use of gross performance, net performance, related performance, extracted performance, hypothetical performance, and predecessor performance. See 17 CFR 275.206(4)-1(d). For purposes of the IA Marketing Rule, the term "hypothetical performance" means "performance results that were not actually achieved by any portfolio of the investment adviser." 17 CFR 275.206(4)-l(e)(8). It includes but is not limited to: (1) performance derived from model portfolios; (2) performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and (3) targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement. 17 CFR 275.206(4)-l(e)(8)(i). FINRA's proposed rule change would cover a subset of the types of hypothetical performance information covered by the IA Marketing Rule. Notice at 9313. FINRA stated that its proposed rule change would treat the communication of projected performance and targeted returns in a manner generally consistent with the IA Marketing Rule. Id.

49 Id. at 9309, 9314.

50 Id. at 9314.

51 Id. at 9309.

52 Id.

53 See, e.g., letter from Eversheds Sutherland (US) LLP on behalf of the Committee of Annuity Insurers, dated Mar. 18, 2026, at 2, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-729427-2273554.pdf ("CAI"); letter from Gail Bernstein, General Counsel and Head of Public Policy, Investment Adviser Association, dated Mar. 17, 2026, at 1-2, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-727988-2271277.pdf ("IAA I"); letter from Bernstein, dated July 28, 2026, at 2, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-978559-3059528.pdf ("IAA II"); letter from James Dowd, CEO, North Capital Private Securities, dated Feb. 27, 2026, at 1, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-716827-2243174.pdf ("North Capital I"); letter from Matthew Thornton ("Thornton"), Deputy General Counsel, Investment Company Institute, dated Mar. 18, 2026, at 1, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-728827-2272714.pdf ("ICI I"); letter from Thornton, dated July 28, 2026 at 1-2, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-978400-3059006.pdf ("ICI II");

decisions,[54] reduce investor confusion,[55] remove an incentive for issuers to avoid using broker-dealers to distribute their offerings,[56] encourage capital formation,[57] and promote regulatory harmonization by aligning more closely with the IA Marketing Rule.[58]

Other commenters opposed the proposed rule change.[59] One of these commenters stated that the proposed rule change would expose investors to substantial risk of misleading and

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letter from Anya Coverman, President & CEO, Institute for Portfolio Alternatives, dated Mar. 18, 2026, at 1-2, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-729209-2273154.pdf ("IPA"); letter from Bernard Canepa ("Canepa"), Managing Director & Associate General Counsel, SIFMA, dated Mar. 18, 2026, at 1, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-729367-2273454_0.pdf ("SIFMA I"); letter from Canepa, dated July 27, 2026, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-976199-3052947.pdf ("SIFMA II"); letter from Simpson Thacher & Bartlett LLP, dated Mar. 18, 2026, at 1, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-728847-2272814.pdf ("Simpson Thacher"); letter from Craig Pfeiffer, President and CEO, Money Management Institute, dated Mar. 18, 2026, at 1, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-730027-2274754.pdf ("MMI"); letter from Jennifer Han, Chief Legal officer and Head of Global Regulatory Affairs, Managed Funds Association, dated Mar. 20, 2026, at 1, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-731447-2276834.pdf ("MFA I"); letter from Han, dated June 16, 2026 at 1-2, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-831639-2543984.pdf ('MFA II"); letter from Catherine Bowman, Chair of the Alternative & Direct Investment Securities Association Legislative and Regulatory Committee, ADISA, dated July 28, 2026 at 1-2, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-979180-3061748.pdf ("ADISA").

54 See, e.g., IPA at 1 (stating that "[i]nvestors could use this information to consider alternative investment strategies, compare that information with projections and targeted returns from other entities, and make more informed investment decisions."); CAI at 2; Simpson Thacher at 1-2; see MMI at 1.

55 See, e.g., IPA at 2 (stating that the proposed rule change would help eliminate investor confusion caused by receiving different types of performance information on the same investment from both registered investment advisers and registered broker-dealers); Simpson Thacher at 1-2; MMI at 1; CAI at 2; IAA I at 2; IAA II at 2.

56 See, e.g., IPA at 2 (stating that the proposed rule change would remove an incentive for issuers to distribute private offerings outside of the broker-dealer channel); see also MMI at 1 (stating that the proposed rule change would help address competitive disparities between investment advisers and broker-dealers).

57 See, e.g., IPA at 2; Simpson Thacher at 1-2.

58 See, e.g., IAA I at 2 (alignment will reduce compliance costs by permitting members to leverage existing compliance infrastructure developed to satisfy the IA Marketing Rule); IAA II at 2; MFA I at 1; CAI at 2; ICI I at 6; Simpson Thacher at 1-2; MMI at 1.

59 See, e.g., letter from Michael Bixby, President, Public Investors Advocate Bar Association, dated Jul. 24, 2026, at 1, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-973979-3030989.pdf ("PIABA"); letter from "Average Civilian," dated August 6, 2026, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-994460-3111826_0_1.html ("Average Civilian"); letter from Marni Rock Gibson, President, NASAA, dated Mar. 18, 2026, at 2, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-728987-2272934.pdf ("NASAA") (stating that NASAA cannot support the proposed rule change "without better investor protection guardrails incorporated into the text of the rule"). One

unbalanced sales presentations;[60] another commenter stated that the proposed rule change would weaken FINRA Rule 2210 and is not in the public interest.[61]

Other commenters recommended various modifications to the scope of information covered by the proposed rule change. Several commenters requested that FINRA broaden the scope of information excepted.[62] In particular, some commenters recommended modifications to further align the scope of information covered with the IA Marketing Rule.[63] One of these commenters recommended that FINRA amend the proposed rule change to permit the communication of all types of hypothetical performance.[64] Alternatively, this commenter recommended that, at a minimum, FINRA permit members to communicate certain types of

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commenter stated that FINRA has not created an administrative record sufficient to support approval of the proposed rule change, asserting that broker-dealer compliance costs associated with the proposed rule change would disproportionately impact capital formation for small issuers. Letter from James Hunter Poole ("Poole"), Executive Chairman & CEO, Obelisk Tech Systems Inc., dated May 27, 2026, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-2395866_0.htm ("Obelisk I"); letter from Poole, dated July 22, 2026, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-3014166.htm ("Obelisk II"). In response, FINRA stated that the proposed rule change "does not impose unreasonable costs in terms of compliance or operations, including in connection with small issuer offerings facilitated by broker-dealers." FINRA Response III at 12. The proposed rule change does not impose an additional mandatory compliance cost on all members; rather, it permits members—at their discretion—to communicate projected performance and targeted return information subject to conditions reasonably designed to protect investors and the public interest. Moreover, the record for this filing is based, in part, on years of FINRA engagement with its members, advisory committees, and the public, and it includes an Economic Impact Assessment addressing anticipated costs, benefits, and considered alternatives to best achieve its regulatory objectives. See, e.g., Notice at 9309, 9315-17. As outlined in this order, and based on the record, FINRA met its burden to demonstrate the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.

60 See, e.g., PIABA at 2 (stating that members' concerns over a competitive disadvantage with investment advisers must not take precedence over investor protection).

61 See, e.g., letter from Honey J. Music, dated Jul. 28, 2026, https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-3060407.htm ("Music"); see Average Civilian.

62 See, e.g., SIFMA I at 1; Simpson Thacher at 3-4; letter from Molly Diggins, Partner & General Counsel, Monument Group, Inc. dated Mar. 18, 2026, at 2-3, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-730507-2275274.pdf ("Monument Group"); IAA I at 3-5; IAA II at 2-3.

63 See, e.g., SIFMA I at 1 (stating that incomplete alignment between FINRA Rule 2210 and the IA Marketing Rule results in uneven access to information about the same investment strategies depending solely on the regulatory channel through which the communication is delivered); Simpson Thacher at 3-4; Monument Group at 2-3; IAA I at 3-5; IAA II at 2-3.

64 See IAA I at 3-5; IAA II at 2-3.

hypothetical performance, including extracts from composites, composites of extracts, or track records developed based on the aggregation of actual positions across various accounts and/or funds.[65] Commenters similarly recommended that FINRA permit members to communicate backtested and model performance,[66] related performance,[67] and extracted performance.[68]

One commenter requested that FINRA create a tiered regulatory framework that covers projected performance and targeted returns as well as educational, distribution, and cash-flow illustrations and imposes varying levels of restrictions on each category of communication.[69] One commenter recommended that FINRA remove targeted returns from the proposed rule change, stating that targeted returns should not have been covered by FINRA Rule 2210's prohibition in the first place and therefore should not be subject to the proposed rule change.[70] Another commenter requested that FINRA create "a proportionate framework that recognizes the difference between a generalized target return and a detailed projection."[71]

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65 IAA I at 5-6; IAA II at 3. IAA stated that these forms of performance are "derived from actual investment decisions and outcomes and do not present a meaningful risk of investor misunderstanding if subject to the same controls and conditions that FINRA proposes to apply" to projections of performance and targeted returns. IAA II at 3. In the context of the IA Marketing Rule, the Commission has stated that "performance that is extracted from a composite from multiple portfolios . . . may not reflect the holdings of any actual investor. As a result, . . . this performance information is subject to the additional protections that apply to advertisements containing hypothetical performance . . . ." Investment Adviser Marketing, Investment Advisers Act Release No. 5653 (Dec. 22, 2020), 86 FR 13024, 13077 (Mar. 5, 2021) ("IA Marketing Rule Adopting Release").

66 MFA I at 2; MFA II at 2; IAA I at 3-5; MMI at 2-4; Monument Group at 2-3; SIFMA I at 3-4 (backtested performance); ICI I at 6; see letter from Justine Tobin, Executive Representative & Founder, Tobin & Company Securities, dated Mar. 18, 2026, at 6, https://www.sec.gov/comments/sr-finra-2026-004/srfinra2026004-729071-2272956.pdf ("Tobin") (the proposed rule change should permit broker-dealers to "provide financial projections and models to investors," subject to certain disclosures).

67 MFA I at 3-4; MFA II at 3-4; SIFMA I at 3-4; Simpson Thacher at 3-4; ICI I at 6-7; ICI II at 3.

68 IAA I at 5-6; IAA II at 3; MMI at 4; see MFA I at 4; MFA II at 4.

69 ADISA at 2-3.

70 North Capital I at 1-3; letter from James Dowd, Chief Executive Officer, North Capital Private Securities, dated Jun. 2, 2026, at 1-2 ("North Capital II"), https://www.sec.gov/comments/SR-FINRA-2026-004/srfinra2026004-799019-2416666.pdf.

71 MMI at 4-5.

Commenters also requested that FINRA provide guidance on the application or impact of the proposed rule change under specific circumstances, such as the presentation of portfolio or investment characteristics,[72] the presentation of gross versus net-of-fees performance,[73] and the presentation of internal rates of return.[74]

In response to commenters who opposed the proposed rule change, FINRA stated that the investor protection requirements specific to the proposed rule change, including the policies and procedures requirements and the disclosure obligations, provide appropriate investor protection.[75] Because these proposed conditions would operate alongside the existing general content standards, FINRA stated that the proposed rule change would not reduce investor protection.[76]

With respect to requests to modify the scope of communications covered by the proposed rule change, FINRA declined to amend the proposed rule change. In particular, FINRA declined to remove "targeted returns" from its scope or subject projected performance and targeted returns to different obligations, stating that FINRA continues to believe that investors may not always understand or appreciate the distinction between projected performance and targeted returns, so the same conditions should apply to these communications under FINRA Rule 2210.[77] FINRA

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72 Simpson Thacher at 4.

73 Id.

74 IAA I at 6-7; IAA II at 3; MMI at 7; MFA I at 6; MFA II at 6; Simpson Thacher at 2-3; Monument Group at 3.

75 FINRA Response III at 19-20.

76 See, e.g., id. at 9-10.

77 FINRA Response II at 14; see Notice at 9310 n.29.

also stated that it has long taken the position that Rule 2210(d)(1)(F) prohibits communications that contain targeted returns.[78]

In addition, FINRA declined to modify the proposed rule change to cover additional types of performance at this time, stating that requests to do so are beyond the scope of the proposed rule change.[79] FINRA stated that the proposed rule change represents an incremental change, declined to address the merits of the requests to broaden the scope of the information covered, and noted that this does not foreclose future potential amendments to adopt standards for other performance categories.[80]

FINRA also declined the request to create a tiered regulatory framework that would also address educational, distribution, and cash-flow illustrations.[81] FINRA stated that such a framework would require unnecessary categorization, definitional distinctions, and differing regulatory treatment that would create burdens and complexity that could frustrate members' understanding of and compliance with the proposed rule change.[82] Finally, FINRA acknowledged commenters' requests for guidance, and stated that, if the Commission approves the proposed rule change, it will consider providing additional guidance as appropriate.[83]

The proposed rule change reasonably expands the exceptions to FINRA's prohibition on communications that predict or project performance to cover projected performance and targeted

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78 FINRA Response III at 13 (citing FINRA Rule 2210 Frequently Asked Questions, Question D.7, supra n.16).

79 FINRA Response II at 6; FINRA Response III at 4; see Notice at 9315 (stating FINRA believes that the proposed rule change strikes the right balance between protecting investors and allowing more information to be communicated to an appropriate audience).

80 FINRA Response III at 4.

81 Id. at 4-5.

82 Id. at 4.

83 FINRA Response II at 16; FINRA Response III at 6.

returns in certain narrowly defined circumstances and subject to conditions that are reasonably designed to protect investors. As described in detail below, the proposed rule change is reasonably designed to help ensure that such communications are: (1) relevant to the likely financial situation and investment objectives of the intended audience (i.e., investors who have the resources and financial expertise); and (2) made with disclosures that would equip the intended audience to evaluate the risks and limitations of such information.[84] In addition, the proposed rule change would require members to maintain records concerning the source of any projection of performance or targeted return used in the communication.[85]

Currently, other market participants, including issuers and investment advisers, can provide projected performance and targeted returns to investors, subject to certain conditions. Because FINRA Rule 2210 prohibits members from communicating projected performance or targeted return information, certain investors may be confused by the different information they may receive about the same investment from different market participants. The proposed rule change would help to reduce this confusion—subject to conditions designed to protect investors, as discussed further below—by permitting investors to receive additional information and make more informed investment decisions.

Furthermore, by limiting the exception to projections of performance and targeted returns (and not expanding to include at this time additional categories of performance information suggested by commenters, such as backtested, model, related, and extracted performance), the proposed rule change incrementally permits members to disseminate additional categories of performance information, while allowing FINRA to gain regulatory experience with its

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[84] Proposed Rule 2210(d)(1)(F)(iv).

[85] Proposed Rule 2210(b)(4)(A)(iv).

members' provision of projected performance and targeted return information to investors to evaluate whether future changes, including expansion of the exception, would be appropriate. 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 proposed rule change to certain categories of information, as appropriate, if the Commission approves the proposed rule change.

It is likewise reasonable to subject projected performance and targeted returns to the same requirements, as this treatment is consistent with how FINRA has interpreted the general prohibition on predicting or projecting performance and recognizes that the distinction between targeted returns and performance projections is not always clear to investors.

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Conditions of the Proposed Exception

As described above, the proposed rule change would allow members to communicate projected performance or targeted returns, subject to conditions reasonably designed to protect investors and the public interest. As originally proposed in the Notice, the proposal would have required members to: (1) adopt and implement 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 of the communication;[86] (2) provide sufficient information to enable the intended audience to understand: (a) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected

[86] Proposed FINRA Rule 2210(d)(1)(F)(iv)(a).

performance or targeted return is net of anticipated fees and expenses;[87] and (b) 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;[88] and (3) have 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 ("reasonable basis requirement").[89]

As discussed in more detail below, the Commission received comments on each of these proposed conditions, as well as other comments suggesting additional conditions or different requirements altogether. In response, FINRA determined to amend the proposed rule change to modify the disclosure requirements, remove the reasonable basis requirement, and impose a modified recordkeeping requirement.[90]

1. Written Policies and Procedures

The proposed rule change would require any member that provides a communication containing projected performance or targeted returns with respect to a security, a securities portfolio, or an asset allocation or other investment strategy to adopt and implement 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 of the communication.[91] FINRA stated that this condition is intended to provide members with the

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87 Notice at 9311-12.

88 Id.

89 Id. at 9311.

90 See Partial Amendment No. 1.

91 Proposed Rule 2210(d)(1)(F)(iv)(a). FINRA stated that, to the extent a member makes this determination with respect to a retail customer and communicates projected performance or targeted returns with a recommendation of a securities transaction or investment strategy involving securities, Regulation Best Interest would apply. Notice at 9311.

flexibility to develop policies and procedures that best suit their investor base and the business in which they engage.[92] Nevertheless, FINRA stated that, under such reasonably designed policies and procedures, a communication that contains projected performance or targeted return information should only be distributed where the member reasonably believes that the intended audience has the resources and financial expertise.[93] FINRA also stated that the proposed rule change generally would not permit a member to include projected performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general retail investor audience, because a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience.[94]

One commenter stated that the proposed policies and procedures requirement and the proposed disclosure requirement, combined with the existing investor protection obligations in the general content standards would ensure that investors are adequately informed and protected.[95]

Two commenters recommended modifications to the proposed policies procedures requirement.[96] One commenter recommended that FINRA amend proposed FINRA Rule 2210(d)(1)(F)(iv)(a) to expressly require that a member's written policies and procedures be reasonably designed to ensure that a communication's intended audience possesses the financial

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92 Id. at 9310.

93 See id. (discussing the written policies and procedures requirement); FINRA Response III at 16. As a result, FINRA stated that, in practice, it "expects that the proposed rule change will primarily impact institutional and other sophisticated investors and those members that serve them." Notice at 9316.

94 Id. at 9310-9311.

95 ICI I at 5-6.

96 NASAA at 2, 4-5; Tobin at 6.

expertise and resources to understand the risks and limitations of projected performance or targeted returns.[97] The commenter stated that given projected performance or targeted return information could be provided to retail investors, members should be expressly obligated to ensure that the intended audience has the resources and expertise to evaluate the information properly, and this modification would help ensure that members carefully consider the intended audience and not engage in direct marketing to certain investors.[98]

By contrast, the other commenter appeared to request the removal of the policies and procedures requirement, stating that the proposed rule change's conditions discourage the communication of projected performance and targeted return information altogether.[99] This commenter recommended that FINRA amend the proposed rule change to permit the communication of such information to any investor "provided that the assumptions underlying the projections are disclosed and appropriate cautionary language explains their limitations."[100]

Several other commenters suggested that FINRA provide additional guidance regarding the policies and procedures requirement and the intended audience of the communications.[101] One commenter requested that FINRA clarify that the proposed rule change would not require members to adopt policies and procedures reasonably designed to ensure that the investors who receive the communication have a mandated level of financial expertise and resources, as such a requirement would be "impractical and unwarranted."[102] Another commenter stated that the

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97 NASAA at 4-5.

98 Id. at 5.

99 Tobin at 1-2, 6 (stating that the conditions of the proposed rule change impose a level of supervisory responsibility that would make members reluctant to rely on it).

100 Id. at 6.

101 See, e.g., IPA at 2; Monument Group at 4-5.

102 IPA at 2.

proposed policies and procedures requirement would be redundant of the suitability requirements under FINRA Rule 2111(b) to the extent a communication is simultaneously subject to those requirements, and that satisfaction of institutional suitability obligations under FINRA Rule 2111(b) should automatically fulfill the proposed rule change's policies and procedures requirement.[103]

In response to the request to modify the rule text to expressly provide that a member's policies and procedures must be reasonably designed to ensure the intended audience possesses the financial expertise and resources to understand the risks and limitations of the projected performance or targeted return, FINRA stated that the proposed rule change takes a similar approach to the one the Commission adopted in the IA Marketing Rule.[104] Specifically, FINRA observed that the IA Marketing Rule requires investment advisers communicating hypothetical performance information in an advertisement to "[a]dopt[] and implement[] 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."[105] FINRA observed that, in the adopting release for the IA Marketing Rule, the Commission stated that this policies and procedures requirement was designed to help ensure that an adviser provides advertisements containing hypothetical performance information only to those investors who have the resources and financial expertise to appropriately consider such information, and that hypothetical performance "may not be relevant to the likely financial

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103 Monument Group at 4-5.

104 See FINRA Response II at 8-9; FINRA Response III at 15-17.

105 See FINRA Response III at 15 (citing 17 CFR 275.206(4)-1(d)(6)(i)).

situation and investment objectives of and may be misleading for investors that do not have the resources and financial expertise" and "could tell [such] an investor little."[106]

FINRA stated that the proposed policies and procedures requirement would impose comparable obligations on members that intend to distribute communications that contain projected performance or targeted returns by limiting the distribution of such communications to investors who have the resources and financial expertise.[107] Providing such information to investors who do not have such resources and expertise, FINRA stated, "could be misleading as such persons may not understand the risks and limitations of relying on such presentations."[108] Accordingly, FINRA declined to modify as suggested.[109]

FINRA also addressed the commenter's assertion that this proposed requirement would be duplicative of existing obligations under FINRA Rule 2111(b).[110] FINRA stated that the proposed rule change would apply to all communications (not just those made to institutional customers) and would not be limited to those made in connection with, a recommendation.[111] However, to the extent a member wishes to adopt overlapping policies and procedures for compliance with both FINRA Rule 2111(b) and the proposed rule change, FINRA stated that a member may do so, as long as such policies and procedures address the requirements of each rule.[112]

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106 FINRA Response III at 16-17 (quoting IA Marketing Rule Adopting Release at 13083).

107 Id. at 17.

108 Id.

109 FINRA Response II at 8; FINRA Response III at 15-16.

110 FINRA Response II at 9; FINRA Response III at 17-18.

111 See FINRA Response II at 9.

112 See FINRA Response III at 18.

It is reasonable to require members communicating projected performance or targeted returns to adopt and implement written policies and procedures reasonably designed to ensure that such communications are relevant to the likely financial situation and investment objectives of the intended audience of the communication.[113] The proposed rule change provides for flexibility in a member's development of such policies and procedures, which would allow members to account for their investor base and business models, while also requiring that the policies and procedures impose appropriate constraints on the audience that can receive such communications. Notably, this policies and procedures requirement generally would not permit the inclusion of projected performance for a mass audience or general circulation (including to a general retail audience) and is designed to help ensure that communications containing projected performance and targeted return information are only be distributed where the member reasonably believes that the intended audience has the resources and financial expertise.[114] As a result, FINRA expects that such communications will primarily be distributed to institutional and other sophisticated investors. Further, this approach, including the related interpretations, is generally consistent with the Commission's interpretation of the IA Marketing Rule, thereby fostering greater regulatory uniformity, as appropriate, between the investor protections that apply when broker-dealers and investment advisers provide communications containing projected performance and targeted return information.

Similarly, while there may be some overlap in the obligations imposed by the proposed policies and procedures requirement and existing suitability obligations under FINRA Rule

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113 The proposed rule change would, as a practical matter, not permit the inclusion of projected performance or targeted returns in communications to a mass audience or for general circulation, including to a general retail investor audience, because a member generally could not form any expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience in such situations. See Notice at 9310-11.

114 See FINRA Response II at 10; FINRA Response III at 16.

2111(b), given that the rules serve different purposes, it is reasonable to maintain the separate obligations and not expressly provide that satisfaction of FINRA Rule 2111(b) would satisfy the proposed rule change. Nevertheless, a member seeking compliance efficiencies could adopt dual-use policies and procedures that address the requirements of both the proposed rule change and FINRA Rule 2111(b).

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

2. Disclosure Requirements

As originally proposed in the Notice, the proposal would have required any member communicating projected performance or targeted returns with respect to a security, a securities portfolio, or an asset allocation or other investment strategy to provide sufficient information to enable the intended audience to understand: (1) 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 (2) 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.[115]

Two commenters recommended that FINRA modify the proposal as originally proposed in the Notice to more closely align the proposed disclosure requirements with those of the IA

[115] Notice at 9311-12 (describing then-proposed FINRA Rule 2210(d)(1)(F)(iv)(c)).

Marketing Rule.[116] One of these commenters recommended that FINRA remove the requirement to disclose the reasons why the projected performance or targeted return information may differ from actual performance.[117] This commenter stated that the IA Marketing Rule does not impose such a requirement, so the inclusion of this requirement would disadvantage broker-dealers by requiring them to provide more disclosures than investment advisers.[118] The other commenter requested that FINRA confirm that members could satisfy the requirement to disclose the reasons why projected performance or targeted return information may differ from actual performance by using "standard or generic risk disclosure language addressing market risk, model risk, assumption uncertainty, and the inherent limitations of forward-looking statements."[119] This commenter also requested that FINRA confirm that disclosures prepared in compliance with the IA Marketing Rule would satisfy the proposed disclosure requirements of the proposed rule change.[120]

In response, FINRA amended the proposed rule change to remove the express requirements to disclose "whether the projected performance or targeted return is net of anticipated fees and expenses" and the "reasons why the projected performance or targeted return might differ from actual performance."[121] FINRA stated that the general content standards may, depending on the facts and circumstances, require members to include the disclosures that were removed from the initially proposed rule text to ensure that a

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116 SIFMA I at 3; MMI at 6 (stating that differences in the disclosure requirements under the proposed rule change and the IA Marketing Rule would create operational complexity for dual-registrants and members distributing adviser-prepared materials).

117 SIFMA I at 3.

118 Id.

119 MMI at 6.

120 Id.

121 FINRA Response II at 15; Partial Amendment No. 1 at 8.

communication containing a projection of performance or targeted return is fair, balanced, and not misleading.[122] FINRA further stated that the general content standards, together with the proposed rule change's remaining disclosure requirements, would help ensure that investors receive the information necessary to consider the risks and limitations of performance information.[123] Separately, FINRA stated that, notwithstanding similar phrasing in the IA Marketing Rule and the proposed rule change, the phrasing is not identical and investment advisers are subject to a separate regulatory regime that may inform distinct regulatory treatment based on the facts and circumstances.[124] For this reason, at this time, FINRA cannot categorically conclude that disclosures that comply with the IA Marketing Rule would always satisfy the requirements of FINRA Rule 2210.[125]

Commenters generally supported these amendments.[126] Other commenters opposed the elimination of the proposed express requirements to disclose "whether the projected performance or targeted return is net of anticipated fees and expenses" and the "reasons why the projected performance or targeted return might differ from actual performance."[127] One of these commenters stated that if the general content standards already require the same disclosures, then an express requirement would have placed no additional compliance burden on members; if, however, a situation arises in which making these disclosures imposes a heavier compliance burden on a member, then the investors "absolutely should" receive such disclosures.[128] Another

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122 Partial Amendment No. 1 at 8.

123 FINRA Response II at 15.

124 FINRA Response III at 13.

125 Id.

126 See, e.g., ADISA at 5-6; IAA II at 2; SIFMA II at 1; ICI II at 2.

127 See, e.g., PIABA at 3; Average Civilian at 1.

128 PIABA at 3.

commenter stated that investors could be easily misled without disclosures about fees, risks, and why projections might differ from actual performance.[129]

In response, FINRA declined to reintroduce these express disclosure requirements, stating that nothing in the proposed rule change would deprive investors of material information or reduce investor protection.[130] FINRA stated that the general content standards, which would apply to all communications of projected performance or targeted return information, already prohibit the omission of any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.[131] FINRA further explained that whether a communication that contains a projected performance or targeted return includes sufficient disclosure to meet the obligations in the proposed rule change and the general content standards will depend on the facts and circumstances of the presentation, including the intended audience receiving the communication.[132]

Specifically, FINRA stated that while it would generally expect that, to meet the disclosure requirement regarding the criteria used and assumptions made, a communication would provide sufficient information for the investor to determine whether a projected performance or targeted return is net of anticipated fees and expenses,[133] the contours of this disclosure would depend on the facts and circumstances, including for example, the sophistication of the intended audience.[134] Similarly, FINRA stated that, to comply with the requirement to disclose the risks and limitations, FINRA would generally expect that a

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129 Average Civilian at 1.

130 FINRA Response II at 15; FINRA Response III at 10.

131 FINRA Response II at 15 (citing FINRA Rule 2210(d)(1)(A)).

132 FINRA Response III at 10.

133 Id.

134 Id.

communication that presents a projection of performance or targeted return to provide sufficient information to enable the investor to understand the reasons why the projected performance or targeted return may differ from actual performance.[135] FINRA noted, however, that these disclosures could be tailored to the intended audience.[136] Ultimately, FINRA stated that the amended disclosure requirements retain the essential elements of the initial proposed rule change, while also providing appropriate flexibility for members to tailor their communications based on the specific communication and its intended audience. [137]

Accordingly, FINRA concluded that the proposed rule change, in combination with the general content standards, will ensure that investors have sufficient information to consider the risks and limitations of relying on such performance projections.[138]

The proposed rule change reasonably requires FINRA members communicating projected performance or targeted returns to provide sufficient information to enable the intended audience to understand: (1) the criteria used and assumptions made in calculating the projected performance or targeted return; and (2) the risks and limitations of using the projected performance or targeted return in making investment decisions. Instead of prescribing the specific content of the required disclosures, the proposed rule change would permit members to tailor the disclosures to their intended audience, consistent with the requirements under the proposed rules, the general content standards, and the federal securities laws. In this way, the proposed rule change appropriately recognizes that the specific disclosures required for each communication of projected performance or targeted return information will depend on, among

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135 Id.

136 Id. at 10-11.

137 FINRA Response III at 10.

138 Id. at 11.

other things, the projected performance or targeted return information itself, the audience of the communication, and the nature of the security, securities portfolio, or asset allocation or other investment strategy at issue.[139] Accordingly, while it is expected that a member would need to disclose whether a projected performance or targeted return is net of anticipated fees and expenses and/or the reasons why the projected performance or targeted return might differ from actual performance to meet the disclosure requirements under the proposed rule, the proposed rule change would provide members flexibility to tailor such communications where appropriate depending on the facts and circumstances, including for example, the particulars of the specific communication and the intended audience.

Further, these disclosure requirements would supplement FINRA Rule 2210's existing general content standards, which broadly require, among other things, that member communications, including communications containing a projection of performance or targeted return, are fair and balanced, and prohibit the omission of any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.[140] As a result, the proposed disclosure requirements, together with the general content standards, should help ensure that investors receive sufficient information to understand the criteria, assumptions, risks, and limitations associated with the projected performance or targeted returns.[141]

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139 For similar reasons, FINRA reasonably declined to opine that any disclosures that comply with the IA Marketing Rule would necessarily comply with the disclosure requirements of the proposed rule change. Id. at 13.

140 FINRA Rule 2210(d)(1).

141 Because the proposed rule change would impose upon members specified disclosure obligations that operate alongside the general content standards, and these obligations are separate from those that the IA Marketing Rule imposes upon investment advisers, it is reasonable that disclosures made in compliance with the IA Marketing Rule would not automatically satisfy the disclosure requirements of FINRA Rule 2210.

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

3. Reasonable Basis Requirement; Recordkeeping Requirement

As originally proposed in the Notice, the proposal included a reasonable basis requirement, which would have required any member that provides a communication containing projected performance or targeted returns with respect to a security, a securities portfolio, or an asset allocation or other investment strategy to have "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."[142] In response to commenters' recommendations to remove, replace, refine, or further explain this requirement,[143] FINRA amended the proposed rule change to remove it.[144] Instead, FINRA proposed to amend FINRA Rule 2210(b)(4) to require that members maintain records concerning the source of any performance projection or targeted return used in their communications.[145]

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142 Notice at 9311 (describing then-proposed FINRA Rule 2210(d)(1)(F)(iv)(b)).

143 See, e.g., SIFMA I at 2-3 (stating, among other things, that third-party projections complicate the application of the reasonable basis requirement and members making recommendations are already subject to Regulation Best Interest, which requires a reasonable basis to believe that a recommendation is in the best interest of a retail customer based on an understanding of the risks, rewards, and costs associated with the investment); ICI I at 5-6 (stating, among other things, that FINRA Rules 2210(d)(1)(A) and (B), as well as the proposed "policies and procedures" and "disclosure" rules, would ensure that investors are adequately informed and protected); Monument Group at 4 (stating, among other things, that the reasonable basis requirements would unnecessarily burden member with onerous and duplicative due diligence and recordkeeping requirements in connection with marketing private funds); MFA I at 4-6 (stating that requiring broker-dealers to independently rederive a third-party adviser's IA Marketing Rule-compliant targeted returns and projected performance would not benefit investors); MMI at 5-8 (requesting practical guidance on the application of the reasonable basis requirement to, among other things, adviser-prepared materials, including materials prepared in compliance with the IA Marketing Rule).

144 FINRA Response II at 12; Partial Amendment No. 1 at 5-7.

145 FINRA Response II at 12-13; Partial Amendment No. 1 at 7.

FINRA stated that an express reasonable basis requirement is unnecessary because FINRA Rule 2210's existing general content standards would preclude any unreasonable performance projections or targeted returns.[146] Specifically, FINRA stated that the general content standards already require, among other things, that all member communications be based on principles of fair dealing and good faith; be fair and balanced; and not make any false, exaggerated, unwarranted, promissory, or misleading statement, claim, opinion, or forecast.[147] FINRA stated that under these applicable standards, it has not identified a set of facts where a projection of performance or targeted return lacking a reasonable basis could comply with FINRA requirements.[148]

To the extent a member communicates projected performance or targeted return information sourced from third parties, FINRA further stated that it would expect members to continue to meet the requirements of the general content standards and reminded members that these standards prohibit them from, for example, 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.[149] FINRA explained that the level of due diligence necessary to assess presentations of performance calculated by third parties would depend on the facts and circumstances.[150] While FINRA would not generally expect a member to independently verify all of the criteria and assumptions underlying the calculation of a projection prepared by a third party, it would expect a member to evaluate the source of such information, assess whether the

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146 FINRA Response II at 12.

147 Id.

148 Id.

149 Id. at 13.

150 Id.

available information in the projection is supported, and satisfy itself that the presentation meets the general content standards of Rule 2210.[151] Moreover, members would also need 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 Rule 2210.[152]

FINRA also stated that amending the proposed rule change to require members to keep records concerning the source of any projections and targeted returns will help substantiate the basis for such performance presentations.[153]

Some commenters supported the removal of the reasonable basis requirement from the proposed rule change and the addition of the new recordkeeping requirement.[154] Two of these commenters stated that eliminating the reasonable basis requirement would align the proposed rule change more closely with the IA Marketing Rule, thereby permitting dual registrants to reduce compliance costs by leveraging existing compliance infrastructure developed for the IA Marketing Rule.[155] One commenter also stated that the general content standards would have made the reasonable basis requirement unnecessary and duplicative.[156] One supportive commenter requested that FINRA provide guidance on what would constitute reasonable assumptions and acceptable methodologies for the calculation of projected performance or targeted return information.[157]

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151 Id.

152 Id.

153 Id. at 12-13.

154 See, e.g., SIFMA II at 1; ICI II at 1-2; see also IAA II at 2.

155 IAA II at 2; see ICI II at 2.

156 ICI II at 2.

157 ADISA at 4-5.

One commenter opposed FINRA's removal of the reasonable basis requirement, stating that FINRA Rule 2210 already imposes an independent reasonable basis requirement in other contexts notwithstanding the existence of the general content standards.[158] This commenter also stated that if the general content standards effectively impose a reasonable basis requirement on members, an express requirement would have placed no additional compliance burden on members.[159] This commenter further stated that even if a situation arises in which an express reasonable basis requirement imposes a heavier compliance burden, then it is precisely the burden the member should carry for the protection of investors.[160] This commenter also opposed the removal of the recordkeeping requirement embedded in the reasonable basis requirement, stating that it would effectively preclude regulators and investors from testing the fairness and reasonableness of such projections.[161]

In response, FINRA reiterated that it was unable to identify a set of facts where a projection of performance or targeted return lacking a reasonable basis could comply with FINRA Rule 2210's existing general content standards, and so accordingly, it does not believe that investor protection is reduced by removing the reasonable basis requirement.[162] Moreover, FINRA stated that: (1) the proposed recordkeeping requirement—coupled with the existing requirement that member communications provide a sound basis for evaluating the facts in regard to any particular security or type of security—would require members to substantiate the

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158 PIABA at 2 (stating that there is a reasonable basis requirement for price targets (FINRA Rule 2210(d)(1)(F)), communications including a recommendation of securities (FINRA Rule 2210(d)(7)), and recommendations in public appearances including a recommendation of securities (FINRA Rule 2210(f)(2))).

159 Id. at 2-3.

160 Id. at 3.

161 Id.

162 FINRA Response III at 8.

basis for such performance presentations in order to demonstrate compliance with the content standards;[163] and (2) in most cases, members would be unable to demonstrate compliance with the proposed rule change and the general content standards without records to support the basis for the criteria used and assumptions made in calculating a projection of performance or targeted return.[164] For these reasons, FINRA stated that the proposed recordkeeping requirement and the general content standards provide robust investor protection.[165] Furthermore, FINRA stated that the omission of an express reasonable basis requirement and the inclusion of other conditions similar to those in the IA Marketing Rule would reduce compliance uncertainty for member personnel who act both as registered representatives and investment adviser representatives, as well as for members that are either dually registered as investment advisers or distribute communications containing projections or targeted returns that are available to both member customers and advisory clients.[166] For these reasons, FINRA declined to reintroduce the reasonable basis requirement into the proposed rule change.[167]

With respect to requests for guidance on the reasonableness of specific assumptions used to calculate projected performance or targeted returns, FINRA stated that the long-established content standards in current FINRA Rule 2210 provide sufficient principles for members to assess the reasonableness of the criteria used and assumptions made in a projection of performance or targeted return.[168] FINRA added that whether a projection of performance or targeted return is reasonable under these general content standards will depend on the facts and

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163 Id. at 9 (citing FINRA Rule 2210(d)(1)(A)).

164 Id.

165 Id.

166 Id. at 8.

167 Id. at 7-11.

168 Id. at 5.

circumstances of the presentation.[169] Finally, FINRA indicated that if the Commission approves the proposed rule change, it will consider what additional guidance may be warranted.[170]

It is reasonable to remove the reasonable basis requirement from the proposed rule change and to require members to maintain records concerning the source of any performance projection or targeted return used in their communications. The general content standards—combined with the recordkeeping requirement—effectively require members to substantiate the basis of any performance projection or targeted return prior to communicating it to investors, as it would be difficult for a member to demonstrate compliance with the proposed rule change and the general content standards without records supporting the basis for the criteria used and assumptions made in calculating the projected performance or targeted return information.[171] Under these circumstances, an express reasonable basis requirement would be duplicative of the general content standards.

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

4. Other Comments

A number of commenters recommended other changes to the proposed rule change, including additional conditions or alternative approaches altogether, as well as the inclusion of compliance safe harbors.

With respect to additional conditions, one commenter recommended that—to the extent a member communicates projected performance or targeted return information to retail

169 Id. at 5-6.

170 Id. at 6.

171 Id. at 9.

customers—FINRA amend the proposed rule change to limit such communications to those made in support of, or in connection with, a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) that is subject to Regulation Best Interest.[172] FINRA declined to make this change, stating that the general content standards and the conditions of the proposed rule change provide appropriate investor protection to retail investors in the absence of a recommendation covered by Regulation Best Interest.[173] FINRA reiterated that under the proposed policies and procedures requirement, communications containing projected performance or targeted returns should only be distributed to investors who have the resources and financial expertise,[174] and could not be included in communications directed to a mass audience or for general circulation, including a general retail investor audience.[175]

It is reasonable that the proposed rule change does not limit a member's ability to communicate projected performance or targeted returns to retail investors to only those circumstances where the communications are made in support of, or in connection with, a recommendation subject to Regulation Best Interest. As discussed above, the proposed policies and procedures requirement is designed to limit communications containing projected performance or targeted returns to investors who have the resources and financial expertise. In addition, the proposed rule change would impose disclosure obligations that require FINRA's members to provide sufficient information to enable the intended audience to understand the criteria, assumptions, risks, and limitations associated with such information. Taken together

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172 NASAA at 5-6.

173 FINRA Response III at 19.

174 FINRA Response II at 10; FINRA Response III at 16.

175 FINRA Response III at 19; see Notice at 9310-11.

with the general content standards of FINRA Rule 2210, these requirements both limit the scope of retail investors who would be eligible to receive these communications to those who are in a position to understand these communications and their associated limitations and would help ensure that any retail investor who receives such a communication would have the information to evaluate it.

With respect to commenters that recommended alternative approaches, one commenter requested that FINRA subject capital acquisition brokers ("CABs") and non-CAB members to the same or similar rules related to the communication of projected performance and targeted return information about unregistered securities to institutional investors.[176] A second commenter requested that FINRA regulate the use of registered index-linked annuity ("RILA") illustrations in a manner similar to variable annuity communications pursuant to FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities).[177] In both instances, FINRA declined to do so. FINRA stated that CABs are subject to a separate rulebook that is specifically limited to firms that elect to operate as CABs with specified limitations on their activities.[178] Accordingly, FINRA disagreed that the communication standards designed for the limited activities of a CAB would be appropriate for a non-CAB member under FINRA Rule 2210.[179] FINRA also stated that to the extent the

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176 Monument Group at 5 (stating that if the Commission approves the proposed rule change, two different standards would apply even where both types of broker-dealers market only unregistered securities to institutional investors).

177 CAI at 2.

178 FINRA Response III at 13.

179 See id.

commenter was requesting an amendment to FINRA Rule 2211, such a request is outside the scope of the proposed rule change.[180]

It is reasonable to impose different regulatory obligations on CAB and non-CAB members related to the communication of projected performance or targeted returns to institutional investors about unregistered securities. CABs are subject to a separate FINRA rulebook that imposes more limited regulatory obligations that are commensurate with their limited activities. For that reason, communication rules that are designed for a CAB's limited business model are inappropriate for non-CAB members that may engage in more expansive business activities. Similarly, the imposition of FINRA Rule 2210's additional restrictions upon CABs would tend to erode the regulatory benefit that the more limited CAB rulebook was designed to provide to members who limit their activities and elect CAB status. In addition, it is reasonable not to amend FINRA Rule 2211 as part of the proposed rule change given it is outside the scope of the proposal.

Another commenter recommended—based on requirements in the Uniform Prudent Investor Act ("UPIA")—that FINRA require the communication of multiple possible outcomes "as an array of probability in different economic conditions" based on statistical norms instead of a single performance projection or targeted return.[181] In response, FINRA stated that the UPIA is a model law that establishes general standards for trustee conduct when investing trust property, and therefore FINRA does not believe that proposed rule change is appropriate for

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180 See FINRA Response II at 17. FINRA also stated that a member could not generally form an expectation that a communication to a mass audience is relevant to the likely financial situation and investment objectives of the intended audience, and whether a RILA illustration intended for a mass audience contains a performance projection or targeted return will depend on the facts and circumstances. Id.

181 Music at 1. Music stated "that the public is better served by adopting UPIA use" by advisers, "which always requires modern portfolio theory directly derived from statistical analysis as a process." Id.

application of the model law.[182] FINRA acknowledged that the provision of multiple possible outcomes may be valuable in some instances but declined to require in every instance that members provide projections of performance or targeted returns in a specific manner or that such presentations be based on specific, differing market conditions.[183] FINRA stated that the disclosures required under the proposed rule change would provide sufficient information to investors and would also provide members flexibility to tailor their communications based on the intended audience of the communication.[184]

It is reasonable that the proposed rule change does not require the disclosure of multiple possible outcomes, as recommended by the commenter. The proposed rule change and the general content standards impose a principles-based framework for the content of member communications containing projected performance or targeted return information. For this reason, it is reasonable to expect that the members communicating projected performance or targeted return information will present such information and any corresponding disclosures in a way that equips the intended audience to meaningfully understand its risks and limitations. Depending on the facts and circumstances, a member may wish to simultaneously provide multiple projections or targets, but FINRA Rule 2210 need not require such presentations in every circumstance.

Further, a commenter suggested that FINRA provide examples or safe harbors for the types of recipients to whom a communication of projected performance or targeted return could be sent under the proposed rule change, including a safe harbor that expressly permits dual

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182 FINRA Response III at 7.

183 Id.

184 Id.

registrants to use communications prepared in compliance with the IA Marketing Rule.[185] FINRA responded that it does not believe that it is necessary to provide any specific safe harbors or additional guidance at this time.[186] With respect to requests for safe harbors tied to the type of recipient, the methodologies used, or the disclosures made, FINRA stated that the proposed rule change is intended to provide members with the flexibility to develop policies and procedures that best suit their investor base and the business in which they engage (e.g., policies and procedures based in part on the member's past experiences with particular types of investors who seek this information).[187] For this reason, FINRA stated that whether a communication containing a projection of performance or a targeted return complies with FINRA Rule 2210 will depend on the facts and circumstances.[188] FINRA stated, however, that if the Commission approves the proposed rule change, it will consider whether additional guidance or amendments would be appropriate.[189]

The proposed rule change reasonably provides a principles-based approach for members to determine the appropriate audience for these communications. Eliminating this flexibility in favor of predefined categories or safe harbors would fail to account for the fact that the

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185 MMI at 6-8 (stating that presumptively permissible audiences should include: (1) high-net-worth retail clients who have been individually assessed; (2) retail clients in managed account or advisory relationships who have completed investment profile questionnaires indicating a level of sophistication and risk tolerance; (3) retail clients meeting specified financial sophistication thresholds; (4) institutional investors; (5) qualified purchasers; and (6) certain accredited investors in Investment Company Act 3(c)(1) funds); see ADISA at 5 (requesting safe harbors "for firms that utilize standardized methodologies and prescribed disclosures"). Relatedly, another commenter requested that FINRA establish a "formal exemptive relief process" in which members can seek guidance on the permissible use of "different types of performance presentations and product illustrations." CAI at 2. In response, FINRA stated that it perceives no need for such a process as part of this proposed rule change, as it would address types of performance that are beyond the scope of the proposed rule change. FINRA Response II at 16. It is reasonable to decline to establish an exemptive relief process, as the comment is outside the scope of the proposed rule change.

186 Id. at 9, 16.

187 FINRA Response III at 6.

188 Id.

189 Id.

circumstances of each communication—including the nature of the communication; the security, securities portfolio, or asset allocation or other investment strategy at issue; and the nature of the intended audience—will be relevant to whether a particular communication would comply with this proposed rule change. As such, it is reasonable to decline to establish specific safe harbors based on categorical, ex ante classifications of investors eligible to receive projected performance or targeted return information.[190] FINRA also stated that if the Commission approves the proposed rule change, FINRA will consider whether guidance is needed in the future.[191]

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.[192]

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190 For similar reasons, the proposed rule change reasonably does not include safe harbors for communications that include projections of performance or targeted returns that adhere to specific calculation methodologies or include specific disclosures. See ADISA at 5 (requesting safe harbors "for firms that utilize standardized methodologies and prescribed disclosures").

191 See FINRA Response III at 6.

192 15 U.S.C. 78o-3(b)(6).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act[193] that the proposed rule change (SR-FINRA-2026-004) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[194]

Sherry R. Haywood,

Assistant Secretary.

193 15 U.S.C. 78s(b)(2).

194 17 CFR 200.30-3(a)(12).