



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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March 18, 2026

Submitted By SEC Webform¹

Sherry R. Haywood
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File No. SR-FINRA-2026-004: Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

Dear Ms. Haywood:

On behalf of the U.S. members of the North American Securities Administrators Association, Inc. (“NASAA”),² I am writing in response to U.S. Securities and Exchange Commission (“SEC” or the “Commission”) Release No. 34-104877, *Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)*, recently filed with the SEC by the Financial Industry Regulatory Authority, Inc. (“FINRA”) as SR-FINRA-2026-004 (the “Proposal”).³

The Proposal is FINRA’s third endeavor to amend Rule 2210 to allow broker-dealers to provide projections of performance and targeted returns (collectively, “projections”) to their customers (the previous two being Regulatory Notice 17-06 and SR-FINRA-2023-016). SR-FINRA-2023-016 was approved in 2024 by SEC staff acting under delegated authority but was

¹ <https://www.sec.gov/comments/sr-finra-2026-004/notice-filing-proposed-rule-change-amend-finra-rule-2210-communications-public#no-back>.

² Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

³ The Proposal is published as [SR-FINRA-2026-004, Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 \(Communications with the Public\)](#), SEC Release No. 34-104877 (Feb. 20, 2026).

immediately stayed by the Commission, where it remains.⁴ FINRA now offers the Proposal instead, and states that it will withdraw SR-FINRA-2023-016 if the Proposal is approved.

Because the Proposal includes retail investors within its scope, NASAA cannot support it without better investor protection guardrails incorporated into the text of the rule. Specifically, the Proposal should (i) require that broker-dealer written policies and procedures are designed to ensure that retail investors receiving projections “have the financial expertise and resources to understand the risks and limitations of such presentations,”⁵ and (ii) limit projections to retail investors to circumstances where a broker dealer “is recommending a securities transaction or investment strategy involving securities.”⁶

I. Background of the Three Rule 2210 Proposals

FINRA’s first approach, described in Regulatory Notice 17-06, would have allowed broker-dealers to distribute “customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security....”⁷ NASAA commented on this notice and recommended that FINRA more thoroughly develop guardrails for retail investors before bringing a proposal to the Commission.⁸ Regulatory Notice 17-06 did not move forward.

FINRA’s second approach, SR-FINRA-2023-016, would have allowed broker-dealers to “project the performance or provide a targeted return with respect to a security or asset allocation or other investment strategy in an institutional communication or a communication distributed solely to qualified purchasers ... that promotes or recommends specified non-public offerings....”⁹ However, SR-FINRA-2023-016 would only have allowed broker-dealers to provide such

⁴ See [Letter from J. Matthew DeLesDernier, Deputy Secretary, SEC, to Meredith Cordisco, Associate General Counsel, FINRA, Re: Self-Regulatory Organizations; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend FINRA Rule 2210 \(Communications with the Public\) to Permit Projections of Performance in Institutional Communications and Specified Communications to Qualified Purchasers and Knowledgeable Employees](#) (July 26, 2024).

⁵ Proposal at 11-12.

⁶ *Id.* at 12.

⁷ See [Regulatory Notice 17-06, Communications with the Public](#) (Feb. 2017).

⁸ See [Letter from Mike Rothman, NASAA President and Minnesota Commissioner of Commerce, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, Re: Regulatory Notice 17-06: Communications with the Public](#) (Mar. 24, 2017).

⁹ See [SR-FINRA-2023-016, Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 \(Communications with the Public\) to Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications](#), SEC Release No. 34-98977 (Nov. 17, 2023).

projections to a limited set of so-called “Projection-Eligible Investors.”¹⁰ The vast majority of retail investors would not have qualified.¹¹ SR-FINRA-2023-016 excluded retail investors out of a concern, which NASAA shares, that retail investors could misinterpret or unduly rely on projections. As FINRA explained:

FINRA considered whether members should be permitted to provide projections of performance or targeted returns in all retail communications, including for asset allocation, other investment strategies or for single investment products, such as mutual funds and ETFs. FINRA carefully weighed the potential benefit of providing such a communication to persons other than Projection-Eligible Investors against the potential harm. FINRA has chosen to focus this proposed rule change on communications to Projection-Eligible Investors *because they are more likely to have the sophistication and resources to evaluate any performance projections or targeted returns they receive in the context of other information they are evaluating when making an investment decision.*¹²

FINRA’s current approach under the Proposal would allow broker-dealers to “project the 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, subject to specified conditions to ensure these projections are carefully derived from a sound basis.”¹³ The Proposal differs from SR-FINRA-2023-016 in the scope of communications permitted and it removes the restriction against providing projections to retail investors.

¹⁰ This subset was ultimately defined by FINRA (in a follow-up regulatory letter to the SEC) to include (i) institutional investors, (ii) qualified purchasers, and (iii) knowledgeable employees (with these last two terms to have their meanings under the Investment Company Act of 1940). See [Letter from Meredith Cordisco, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, Re: File No SR-FINRA-2023-016: Proposed Rule Change to Permit Projections of Performance in Institutional Communications and Specified Communications to Qualified Purchasers](#) (Jul. 17, 2024) at 1.

¹¹ See SR-FINRA-2023-016, *supra* note 9, at 7-8.

¹² *Id.* at 30 (emphasis added).

¹³ See Proposal, *supra* note 3.

II. Broker-Dealer Written Policies and Procedures Should Be Designed to Ensure that Retail Investors Have the Expertise and Resources to Understand the Risks and Limitations of Projection Communications

In SR-FINRA-2023-016, FINRA reasoned that offering projections to “Projection-Eligible Investors” was acceptable because they were likely to have the sophistication and resources to evaluate projections properly. In place of that limitation, FINRA would allow projections more broadly so long as they are conditioned on:

(1) the member adopting and implementing 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; (2) the member having a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retaining written records supporting the basis for such criteria and assumptions; and (3) the member providing sufficient information to enable the intended audience to understand (i) 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 (ii) 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.¹⁴

The Proposal does not directly address how this set of procedural steps would alleviate FINRA’s previous concerns about the risks of providing projections to retail investors, including whether investors would understand the limitations that come with such projections. However, the Proposal makes clear that FINRA would still expect broker-dealers to refrain from providing projections to certain investors for the same reasons. As FINRA explains:

A communication that contains projections of performance or targeted returns should *only* be distributed, however, 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.¹⁵

In SR-FINRA-2023-16, FINRA judged this concept important enough to serve as the basis to limit the scope of proposed amendments to Rule 2210 overall. While the Proposal makes clear that FINRA still agrees that broker-dealers should be prohibited from providing projections to investors who lack sufficient expertise and resources to assess the value of the projections, this concept now

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11-12 (emphasis added).

appears only in the Proposal's preamble, where it lacks the power of regulation. The only way to ensure that this key concept is preserved is to make it a requirement by elevating it to the text of the proposed amendment to Rule 2210. Accordingly, NASAA suggests that proposed Rule 2210(d)(1)(F)(iv) a. should read as follows (with added text underlined):

a. adopts and implements written policies and procedures reasonably designed to ensure (i) that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication, and (ii) that the intended audience possesses the financial expertise and resources to understand the risks and limitations of the communication;

While other planks of the proposed amendment address concepts of risks and limitations, none would require broker-dealers to directly assess the expertise and resources of the investors to whom the projections will be directed. Providing projections to retail investors should be married to a clear obligation on the part of broker-dealers to ensure that the recipient investors can evaluate the information properly. That is distinct from the proposed amendment text, which would obligate broker-dealers to provide a certain quantum of information generally. Adding the suggested text would help ensure that broker-dealers consider their customers closely and, in some cases, exercise the judgment not to engage in direct marketing of projections to them.

III. Broker-Dealers Should Limit Projections Made to Retail Investors to Communications Made as Part of a Recommendation

The Proposal states that “[t]o the extent that a member [determines that a projection is relevant] to particular retail investors to whom it is recommending a securities transaction or investment strategy involving securities, the Exchange Act’s Regulation Best Interest (“Reg. BI”) would further protect retail investors, as it requires a broker-dealer to act in a retail customer’s best interest when making such recommendations”¹⁶ While true, the value of this statement is limited in this context. Projections can be offered and shared with customers outside of recommendations. This concern is particularly acute on self-directed platforms, where industry would argue that Reg. BI does not apply.¹⁷ Projections made to entice investors to consider new investments or strategies may not rise to the level of recommendations; however, they can still be the basis on which customers trade and generate business for the broker-dealer. Further, because technology has advanced to the point that mass communications tailored to each recipient are

¹⁶ *Id.* at 12.

¹⁷ See [Letter from Josephy Brady, Executive Director, NASAA, to Vanessa A. Countryman, Secretary, SEC, RE: File No. S7-12-23: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers](#) (Oct. 10, 2023) at 3 (“Brady Letter”); [Letter from Melanie Senter Lubin, President, NASAA, to Vanessa A. Countryman, Secretary, SEC, RE: File No. S7-10-21: Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice](#) (Oct. 1, 2021) at 3.

possible,¹⁸ approving the Proposal as is carries the risk that broker-dealers will flood retail investors with projections, free from the protections of Reg. BI, to encourage them to trade.

For these reasons, comparisons in the Proposal to investment adviser marketing are inapt. An investment adviser's fiduciary duty to clients includes an ongoing duty to monitor each client's account. Broker-dealers have no such obligation, even after Reg. BI.¹⁹ An adviser's ongoing duty to monitor provides a retail customer with a measure of protection against a misapplication of the adviser's projections and requires investment advisers to address the consequences of any poorly-made, or poorly-understood, projections.

On the other hand, Reg. BI's customer care responsibilities only apply in the limited circumstances of discreet transactions. To extend the protections of Reg. BI to retail investor projection communications, the Proposal should be strengthened by limiting such projections to communications associated with recommendations. This could be accomplished by adding the following text as new Rule 2210(d)(1)(F)(iv) d.:

d. limits such communications to retail customers 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 [17 CFR § 240.151-1].

Reg. BI was promulgated in response to concerns that retail investors were confused by the distinction between broker-dealers and investment advisers, and their differing duties.²⁰ Reg. BI partially alleviated the risks of that confusion by raising the standard of conduct to require broker-dealers to act in a customer's best interest in the context of recommendations. Allowing broker-dealers to have the same marketing abilities as investment advisers in circumstances where their duties are either less than those of investments advisers, or in circumstances where no broker-dealer duty exists at all, reintroduces the dangers that Reg. BI was designed to address. Making the change suggested above would ensure that broker-dealers play by similar rules as investment advisers when offering projections to retail investors.

¹⁸ See Brady Letter, *supra* note 17, at 2-3. Perhaps recognizing such capabilities, the Proposal observes equivocally that broker-dealers “*generally* would not be able to include projections of performance or targeted returns in communications directed to a mass audience or intended for general circulation, including to a general investor audience.” Proposal, *supra* note 3, at 12 (emphasis added).

¹⁹ See [Final Rule: Regulation Best Interest, The Broker-Dealer Standard of Conduct](#), SEC Release No. 34-86031 (Jun. 5, 2019) at 17.

²⁰ See SEC, [Study on Investment Advisers and Broker-Dealers](#) (Jan. 2011) at i.

Sherry R. Haywood

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IV. Conclusion

NASAA appreciates the opportunity to comment on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in cursive script that reads "Marni Rock Gibson". The signature is written in black ink and includes a horizontal flourish at the end.

Marni Rock Gibson
NASAA President and
Commissioner, Kentucky Department of
Financial Institutions