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September 11, 2026

Submitted by email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 26-14: *Communications with the Public*

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 26-14, *Communications with the Public* (the "Proposal"). NASAA understands that FINRA is proposing these changes to modernize Rule 2210 to reflect evolving communication practices and technologies. Before moving forward with the Proposal, however, FINRA should establish more definite baseline expectations for firm-level oversight of retail communications, and revise the Proposal to retain the "reasonable basis" and disclosure requirements for retail communications that contain recommendations.

I. FINRA should establish a more definite baseline for oversight of retail communications.

NASAA agrees that the requirements and standards in Rule 2210 should reflect evolving practices and technologies, including the use of social media and artificial intelligence ("AI") tools to communicate with the public and supervise those communications. Instead of requiring that all retail communications be approved by a principal before they are used, the Proposal would require broker-dealers to establish written procedures to determine which retail communications require pre-use approval. While NASAA understands the reason FINRA is considering this change, it is critical that efforts to modernize rules or reduce compliance burdens be appropriately calibrated to maintain the investor protections provided by the existing rule. In order to ensure that firms streamline their procedures for "lower-risk" retail communications while enhancing their review

[1] 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.

of "higher-risk" retail communications, as FINRA intends,[2] FINRA should establish more definite baseline expectations.

The Proposal would codify eight non-exclusive factors that broker-dealers should consider when establishing their written procedures to determine which categories of retail communications require pre-use review and approval.[3] In general, NASAA supports the codification of those factors in proposed Supplementary Material .01. FINRA should also provide additional guidance to ensure that its member firms understand how those factors should be applied in practice. For example, FINRA should clarify that retail communications are more likely to warrant closer scrutiny and pre-use review when they concern complex products or strategies, make recommendations, or include hypothetical or projected performance. Retail communications that meet these criteria are likely to be designed not only to entice new customers to the firm, but also to spur particular investment decisions. It is particularly important that broker-dealers making such communications to retail investors take steps to assure that the recipients of those communications have the expertise and resources to understand the risks and limitations of the information conveyed.[4] Given that retail communications are, by definition, distributed broadly, pre-use review of communications that meet these factors is appropriate to mitigate the risk that retail investors could misinterpret or unduly rely on the information. If FINRA adopts the Proposal, it should further supplement the amended rule with practical guidance, including examples showing firms how FINRA expects the factors to be applied in certain factual scenarios.

In addition to general practical guidance, FINRA should establish clearer expectations regarding how firms and associated persons use social media and AI. As NASAA explained in a recent letter to FINRA, social media presents both extraordinary opportunities to reach investors and unique risks that need to be recognized and considered to ensure that retail investors are both empowered and protected.[5] Given the widespread and increasing use of social media as a forum for investment and financial advice, broker-dealers should pay special attention to the use of social media communications when establishing their written procedures. One persistent area of regulatory interest and concern is communications by so-called "finfluencers." FINRA, NASAA and the SEC have all cautioned the public about the risks of following finfluencers, citing such problems as inaccurate information, hidden agendas, appeals to emotion, and undisclosed conflicts of interest.[6] These individuals may lack relevant qualifications and may not be subject to any

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[2] *See* Proposal at 7.

[3] *See id*. at 4-5.

[4] *See* Letter from Marni Rock Gibson, NASAA President, to Sherry R. Haywood, Assistant Secretary, SEC, Re: File No. SR-FINRA-2026-004: *Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)* (Mar. 18, 2026).

[5] *See* Letter from Marni Rock Gibson, NASAA President, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Re: *Social Media-Influenced Investing* (May 13, 2026).

[6] FINRA, *Investor Bulletin: Social Sentiment Investing Tools – Think Twice Before Trading Based on Social Media* (Apr. 3, 2019); NASAA, *Informed Investor Advisory: Finfluencers* (Aug. 2022); SEC, *Finfluencers, Celebrities, Social Media: Should You Listen to Them?* (last visited Sept. 9, 2026).

regulatory business conduct standards. Social media can amplify misleading content and promote risky investment behaviors. Broker-dealers that publish or promote finfluencer and other third-party content should be responsible for ensuring the quality of that content before distributing it to investors. Accordingly, retail communications that are prepared or made by a third party, or that include content generated by a third party, should always be subject to pre-use review and approval. These communications are unlikely to be the kind of real-time dialog for which pre-use review would impose an unreasonable burden. The Proposal asks how firms should assess whether different social media platforms and communications present high or lower risk and what factors firms should consider in making those assessments. Given the significance of social media as a form of communication, it is imperative that FINRA more clearly define its proposed framework before moving forward with the Proposal.

Similar to the use of social media, broker-dealers' use of AI to generate, distribute, and supervise communications presents both opportunities and novel risks. AI tools can help to enhance efficiency, personalize communications to individual recipients, and scale compliance functions. However, AI tools also introduce novel risks, such as hallucinations and inaccurate outputs, inadvertent disclosure of private information, and communications that may not be properly tailored to the appropriate context or audience.

Firms that use AI tools to communicate with their customers or the broader investing public should be required, not merely encouraged, to establish and maintain written supervisory procedures that address the unique risks presented by the use of such technology. At minimum, a firm's procedures should include processes to ensure that AI-generated content is factually accurate, not misleading, and otherwise consistent with the firm's regulatory obligations. In this vein, FINRA should make clear in its guidance that a broker-dealer establishing written procedures under the proposed amended rule must consider not only "the qualifications and experience of the individuals responsible for supervising, validating or reviewing the AI tool," but also the "qualifications and experience" of the AI tool or the underlying model itself.[7] For instance, communications generated by an AI tool or model that has not been trained specifically for financial analysis should be scrutinized in the same way as communications prepared by any non-expert or inexperienced person.

A firm's procedures should also include safeguards to ensure that customers' private data is protected, consistent with applicable standards. For example, firms must ensure that their use of AI does not expose customers' private information to third-party AI providers, or other third parties that the AI providers may rely on to process and store information, without adequate measures to protect the information and comply with the applicable laws and regulations, including Regulation S-P. Additionally, a firm's procedures should provide for regular, documented review of both the inputs and the outputs to confirm that the AI tools used are performing as expected, consistent with the firm's policies, state and federal securities laws, and FINRA rules. The

[7] Proposal at 7 ("[M]embers may consider the qualifications and experience of the individuals responsible for supervising, validating or reviewing the AI tool or technology."), Attachment A at 10-11 ("When establishing written procedures under Rule 2210(b)(1)(A), members should conduct a risk-based assessment including without limitation consideration of . . . [the] qualifications and experience of the preparer of the communication . . . .").

Proposal suggests that broker-dealers "may consider establishing processes and governance frameworks" for their use of AI in this context.[8] This permissive approach leaves too much subjective room for firms because it creates no enforceable requirement to conform with industry best practices. Firms that elect to use AI in their public communications without these safeguards should face regulatory consequences for exposing the public, and their customers, to the risk of harm caused by those tools. In this regard, FINRA should set mandatory minimum standards, rather than optional best practices. The reasonableness of these procedures must be assessed as a function of each firm's understanding of how the AI tool works, and its ability and resources to effectively review the applicable inputs (*e.g.*, prompts) and generated outputs for compliance. If a broker-dealer lacks the resources to perform a thorough, comprehensive post-use review of its AI-generated retail communications, it is reasonable to question that firm's ability to supervise the activity effectively.

In addition to the use of AI to generate retail communications, the Proposal briefly references feedback that "the prescriptive principal pre-use approval requirement is incongruous with extensive use of AI to supervise, review or approve retail communications."[9] Broker-dealers have an independent, non-delegable duty to ensure that their communications are accurate, not misleading, and adequately protect their customers' personal data. These obligations exist independently from the tools that a firm uses to fulfill them. In considering whether and how to use a third-party AI provider, a firm should have, among other things, a thorough understanding of how the AI tool functions, contractual protections to ensure data security and regulatory compliance, and procedures for ongoing monitoring of the AI tool and the work product it generates. The latter should include defined accountability for errors made by the model, thresholds for human responsibility, and ongoing diligence and periodic assessment of the model and the vendor.[10] While technology may change how firms fulfill their obligations, it should not change the allocation of responsibility. A firm that is unable to explain how its AI supervision tool works, what data it uses, how it reaches its conclusions, and how it monitors the tool and the work product it generates should not be deemed to have met its supervisory duties.

II. **Rule 2210(d)(7) should continue to require a "reasonable basis" and relevant disclosures for recommendations in retail communications.**

Rules 2210(d)(7)(A) and (B) currently require a "reasonable basis" and certain disclosures for recommendations included within retail communications. Subparagraph (C) relates specifically to "past specific recommendations" and limits the circumstances in which broker-dealers may refer to past specific recommendations in their retail communications and correspondence. NASAA does not oppose updating the standard as proposed for past specific recommendations, but the reasonable basis and disclosure requirements in subparagraphs (A) and (B) should remain in the rule because they have independent value that is not replaced by Rule 2210's general content

8 *Id*. at 6.

9 *Id*. at 7.

10 *See*, *e.g.*, Comment from Jaime Arroyave (Aug. 5, 2026).

standards or other standards that apply when broker-dealers make recommendations to their customers.

FINRA's proposed reliance on Rule 2210's general content standards in lieu of the reasonable basis and disclosure requirements would not maintain the investor protection benefits provided by those requirements. The principles set forth in Rule 2210(d)(1) – *e.g.*, requiring that communications be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts – are fundamentally antifraud principles. They serve to ensure that broker-dealer communications are truthful, complete, and not misleading. The reasonable basis requirement performs a different function, serving as a substantive check to ensure the quality of the recommendation made to the recipients of the communication. The reasonable basis requirement is therefore similar to the suitability and best interest standards that apply when broker-dealers make recommendations to their customers.[11] These two kinds of standards exist as distinct concepts in the securities regulatory framework, and they serve different purposes.[12] A recommendation without a reasonable basis is, and should be, prohibited, even when the affirmative statements accompanying the recommendation are truthful and not misleading.

While the reasonable basis requirement is similar to suitability under Rule 2111 and to Regulation Best Interest ("Reg BI"), those standards do not fill the gap created by eliminating subparagraphs (A) and (B) from Rule 2210. The primary reason for this is that Rule 2210 protects investors in circumstances where Rule 2111 and Reg BI may not apply. Those standards apply to recommendations that are made to a "customer."[13] In both cases, the person receiving the recommendation must have an account with the broker-dealer, open an account with the broker-dealer, or act on the recommendation in a way that results in the broker-dealer receiving compensation as a result.[14] FINRA cannot assume that the suitability and best interest standards

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11 *See* FINRA Rule 2111; 17 C.F.R. § 240.15*l*-1.

12 *See Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) ("While Congress enacted the Exchange Act to prohibit fraudulent practices in the securities industry, it recognized that such legislation must be supplemented by regulation on an ethical plane in order to protect the investor and the honest dealer alike from dishonest and unfair practices by the submarginal element in the industry and to cope with those methods of doing business which, while technically outside the area of definite illegality, are nevertheless unfair both to customer and to decent competitor, and are seriously damaging to the mechanism of the free and open market." (internal quotations omitted)).

13 FINRA Rule 2111(a) ("A member or an associated person must have a reasonable basis to believe that a [recommendation] is suitable for the customer, based on the information [about] the customer's investment profile."); 17 C.F.R. § 240.15*l*-1(a)(1) ("A broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation . . . to a retail customer, shall act in the best interest of the retail customer . . . without placing [their own] financial or other interest . . . ahead of the interest of the retail customer.").

14 *See* FINRA Rule 2111 (Suitability) FAQ, at A2.1. ("In general, for purposes of the suitability rule, the term customer includes a person . . . who opens a brokerage account at a broker-dealer or purchases a security for which the broker-dealer receives or will receive, directly or indirectly, compensation . . . ."), A2.2. ("Where, for example, a registered representative makes a recommendation to purchase a security to a *potential investor* . . . , the suitability rule would not apply to the recommendation . . . if the *potential investor* does not act on the recommendation or executes the recommended transaction away from the broker-dealer . . . without the broker-dealer receiving compensation for the transaction.") (last viewed Aug. 20, 2026); 17 C.F.R. § 240.15*l*-1(b)(1) (defining "retail

will cover every recipient of a recommendation embedded in a retail communication. The reasonable basis and disclosure requirements complement those standards by helping to ensure that all recommendations in retail communications reflect a clear baseline level of quality and discipline.

NASAA does not oppose relying on the "fair and balanced" standard for past specific recommendations in subparagraph (C), but comparisons to investment adviser marketing rules are inapt. An investment adviser typically has an ongoing fiduciary duty to monitor each client's account. Reg BI does not impose a similar duty on broker-dealers.[15] An investment adviser's ongoing duty to monitor offers its clients a degree of protection if advice included in one of the adviser's advertisements does not turn out as intended. It also requires investment advisers to address the consequences of their advice. The ongoing obligations that apply to most investment advisers therefore help to mitigate the potential risk of imposing less prescriptive requirements and conditions on investment advisers' marketing communications. In contrast, the limited, transactional nature of the broker-customer relationship calls for more detailed, prescriptive requirements to ensure that retail communications reflect the appropriate level of care and discipline. Furthermore, retaining subparagraphs (A) and (B) would not undermine the intent of the Proposal, given that "FINRA does not anticipate significant economic benefits or costs arising from these proposed changes."[16]

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customer" as "a natural person, or the legal representative of such natural person, who [r]eceives a recommendation . . . and [u]ses the recommendation . . . ."); SEC, Frequently Asked Questions on Regulation Best Interest, at "Retail Customer" (explaining that "[a] retail customer 'uses' a recommendation . . . when, as a result of the recommendation: (1) the retail customer opens a brokerage account with the broker-dealer . . . ; (2) the retail customer has an existing account with the broker-dealer and receives a recommendation from the broker-dealer . . . ; or, (3) the broker-dealer receives or will receive compensation, directly or indirectly as a result of that recommendation, even if that retail customer does not have an account at the firm," and "remind[ing] firms to carefully consider the extent to which associated persons can make recommendations to prospective retail customers (*i.e.*, that have received, but not yet 'used' the recommendation as noted above) in compliance with Regulation Best Interest, including having gathered sufficient information that would enable them to comply with Regulation Best Interest at the time the recommendation is made, should the prospective retail customer use the recommendation.") (last viewed Aug. 20, 2026).

15 *See Regulation Best Interest: The Broker-Dealer Standard of Conduct*, SEC Rel. No. 34-86031, at 17-18 (June 5, 2019).

16 Proposal at 13.

III. <u>Conclusion</u>

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,

Marni Rock Gibson

Marni Rock Gibson
NASAA President