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March 18, 2026

VIA EMAIL TO: rule-comments@sec.gov
Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public) — File No. SR-FINRA-2026-004

Dear Ms. Countryman:

SIFMA[1] submits this letter in support of FINRA's proposed rule change to amend Rule 2210 (the "Proposal")[2], with a caveat that FINRA should use this opportunity to further align the rule with the SEC's Investment Adviser Marketing Rule (the "Marketing Rule").

Incomplete alignment between Rule 2210 and the Marketing Rule directly affects investors, particularly clients of dual registrants, by resulting in uneven access to information about the same investment strategies depending solely on the regulatory channel through which the communication is delivered. Projections and hypothetical performance, when appropriately prepared and disclosed, provide investors with additional context regarding potential outcomes, assumptions, and limitations, and the inability to provide this information in broker-dealer communications can impair investors' ability to compare options and make informed decisions. FINRA recognizes this problem in part: "Rule 2210's prohibition on projections can lead to investor

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA"). For more information, visit http://www.sifma.org.

[2] FINRA, Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 2210 (Communications With the Public), Release No. 34-104877, File No. SR– FINRA–2026–004, 91 FR 9308 (Feb. 20, 2026), https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03705.pdf

confusion, as it results in investors receiving different information about the same investments depending on the financial professional with whom they engage."[3]

We commend FINRA for reconsidering its earlier proposal and incorporating feedback that it received. As SIFMA requested in our December 15, 2023 comment letter, an additional exception to the general prohibition for performance projections and targeted returns is positive. However, we believe FINRA can align Rule 2210 with the Marketing Rule further. We see no reason for the inconsistencies and urge the Commission to direct FINRA to revise the current proposal further. FINRA should instill the Marketing Rule's concepts of investor education and suitability for the intended audience into a revised proposal in a manner that is operationally workable for broker-dealers, particularly when acting as distributors of third-party products.

1. Remove the Reasonable Basis Requirement and Align Standard with the Marketing Rule

While we appreciate that FINRA did not prescribe the factors that would form a reasonable basis, we remain concerned about the application of this standard when broker-dealers are acting in their common capacity as distributors, an issue we raised in our comment letter on the earlier proposal.[4] We view this standard with uncertainty and believe that FINRA is missing an opportunity to level the playing field for broker-dealers completely.

Our members' foremost concern is practical, and it is uncertainty about what would constitute a reasonable basis where a third party is responsible for the criteria and assumptions used to calculate performance projections or targeted returns. Third parties often do not provide sufficient information about their criteria and assumptions to evaluate the reasonableness of their hypothetical returns. The Proposal's intended purpose is negated if broker-dealers cannot confidently form a reasonable basis. Moreover, whether they had a reasonable basis is often determined by examiners with the benefit of hindsight. Faced with this uncertainty, broker-dealers may be deterred from sharing useful forward-looking information out of fear that a projection or target later proves inaccurate or is second-guessed. Acting as distributors is a core part of the business, and this standard could leave broker-dealers at significant disadvantage still. This uncertainty may deter broker-dealers from sharing forward-looking information that would otherwise enhance investor understanding, resulting in broker-dealer clients receiving less complete information than advisory clients evaluating the same investment opportunities.

We recognize that FINRA "views this requirement as foundational" but it has not articulated why broker-dealers should be subject to a different standard than investment advisers, whose communications must simply be fair and balanced. Particularly when there are other requirements of the rule, namely the existing prohibition of false or misleading claims, and the Proposal's disclosure requirements, that safeguard investors.

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[3] *Id*. at 9309.

[4] SIFMA Letter on SR-FINRA-2023-016 (Dec. 15, 2023), https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-314759-820242.pdf

SIFMA further notes that broker-dealers 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. In this context, imposing a separate and independent "reasonable basis" requirement under Rule 2210 for the use of projected performance or targeted returns risks creating duplicative and potentially inconsistent standards. In addition, the Proposal could have the unintended effect of expanding broker-dealers' supervisory and recordkeeping obligations in a manner that is not commensurate with their role as distributors of third-party products, effectively requiring firms to validate or second-guess third-party models, assumptions, or methodologies over which they have no control. Such an outcome would undermine the Proposal's stated objective of facilitating investor access to useful information and could discourage the use of projections altogether, to the detriment of investors evaluating comparable investment strategies across regulatory channels.

We urge FINRA to reconsider this aspect of the proposal, eliminating the reasonable basis requirement and replacing it with the Marketing Rule's fair and balanced standard. In the alternative, FINRA should expressly state that broker-dealers could consider a certification from a third party that prepared a projection or target as a factor to form a reasonable basis for using performance projections or targeted returns in their communications and that broker-dealers are not expected to independently validate third-party models or methodologies.

2. <u>Remove the Requirement to Disclose Why Projected Performance Might Differ from Actual Results</u>

To further align Rule 2210 with the Marketing Rule, FINRA should not require disclosure of the reasons why projected performance or targeted return may differ from actual performance. This is not a requirement under the Marketing Rule, and disadvantages broker-dealers, which must provide additional information to investors than investment advisers. Were FINRA to align Rule 2210 with the Marketing Rule's fair and balanced standard, we posit that investor protection would be maintained.

3. <u>Allow Backtested and Related Performance Consistent with the Marketing Rule</u>

We also urge FINRA to further close the gap between Rule 2210 and the Marketing Rule by revising the proposal to expressly permit broker-dealers to communicate hypothetical returns, such as backtested and related performance, as permitted by the Marketing Rule. Unlike the earlier proposal, which expressly prohibited broker-dealers from basing projected performance or targeted returns upon hypothetical, backtested performance or the prior performance of a portfolio or model created solely for the purpose of establishing a track record, the current proposal is silent in this regard.

Backtested and related performance is a core analytical tool for explaining investment methodologies, model changes, and new strategies for which no live performance history exists. Under the Marketing Rule, such performance is already subject to robust policies, procedures, and disclosure requirements designed to ensure

relevance and fair and balanced presentation. Prohibiting broker-dealers from communicating this information leads to materially different levels of information being provided to investors evaluating identical products and undermines FINRA's stated goals of regulatory harmonization and reducing investor confusion. A fair and balanced standard assuage concerns that this information could be misleading. FINRA should reconsider its historical opposition to these hypotheticals and would be consistent with FINRA's aim to level the playing field for broker-dealers and enhance investor understanding while preserving appropriate investor protections through disclosure and supervisory controls.

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SIFMA reiterates that it is an opportune time for FINRA to further align Rule 2210 with the Marketing Rule and level the playing field for broker-dealers, and we urge it to do so. Thank you for your consideration of our comments. If you would like to discuss our comments further, do not hesitate to contact me.

Sincerely,

Bernard V. Canepa

Bernard V. Canepa
Managing Director & Associate General Counsel