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CLIENT ALERT

FINRA Announces Effective Date of Amendments to Rule 2210 to Permit the Use of Target and Projected Performance

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FINRA has announced that the effective date of the amendments to FINRA Rule 2210 to allow the use of target and projected performance in communications with the public will be February 1, 2027.[1] The SEC approved FINRA's proposed rule change on October 15, 2026.[2]

New FINRA Rule 2210(d)(1)(F)(iv) creates an exception to Rule 2210's general prohibition on communications that predict or project performance to allow a communication that projects performance or provides a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, provided that the FINRA member:

1 Communications with the Public, FINRA Regulatory Notice 26-24 (Nov. 18, 2026).

2 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), Exchange Act Release No. 106675 (Oct. 15, 2026), 91 Fed. Reg. 66371 (Oct. 20, 2026) (SR-FINRA-2026-004).

1. adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience of the communication; and

2. provides sufficient information to enable the intended audience to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions.

FINRA also amended Rule 2210(b)(4)(A)(iv) to require a member to maintain records concerning the source of any projection of performance or targeted return used in a communication.

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. The policies and procedures condition does not prescribe how a member must satisfy the requirement and instead provides members with flexibility to develop policies and procedures that best suit their investor base and business models. 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 type of information, group investors into categories or types, or restrict the intended audience of the communication to investors who have expressed interest or actually invested in particular types of securities. However, FINRA cautioned 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.

FINRA also stated that a communication containing projected performance or targeted returns should only be distributed to investors who a member reasonably believes have access to resources to independently analyze this information and who have sufficient financial expertise to understand the risks and limitations of these types of presentations. According to FINRA, this generally would not permit the inclusion of projected performance or targeted returns in communications for a mass audience or that are intended for general circulation, including a general retail investor audience, because in such mass communications, a member generally could not form a reasonable expectation that the communication is relevant to the likely financial situation and investment objectives of the intended audience.

Disclosure Requirements

Rule 2210(d)(1)(F)(iv) will require that any member that communicates 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, 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. In response to comments, FINRA removed

from the rule text the proposed requirements to explicitly disclose (a) whether the projected performance or targeted return is net of anticipated fees and expenses and (b) the reasons why the projected performance or targeted return might differ from actual performance. In removing the explicit disclosure requirements, FINRA stated that Rule 2210's general content standards, together with the other adopted disclosure requirements, would help ensure that investors receive the information necessary to consider the risks and limitations of such performance information.

Recordkeeping

Notably, FINRA eliminated the proposed requirement that members 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. In response to comments, FINRA instead amended 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. 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. FINRA also 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 basis for such performance presentations in order to demonstrate compliance with the content standards; 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.

The approved rule differs in important respects from the version FINRA filed on February 10, 2026, which we discussed in our prior client alert.[3] Most notably, FINRA removed the express reasonable basis requirement and two of the specific disclosure items, replacing them with a new recordkeeping obligation. These changes better align the amended rule with Rule 206(4)-1 under the Investment Advisers Act of 1940 (the "Marketing Rule"), although the scope of permitted performance remains narrower than performance that is permitted under the Marketing Rule.

In approving the amended rule, the SEC agreed, observing that Rule 2210's general content standards, combined with the recordkeeping requirement, effectively require members to substantiate the basis of any projection before communicating it, because it would be difficult to demonstrate compliance without supporting records. In practice, the substantive expectation for a member to have a reasonable basis remains, even though it is no longer an express condition of the exception.

[3] Willkie Farr & Gallagher LLP, *FINRA Proposes Greater Flexibility to Show Target and Projected Performance in Communications with the Public* (Feb. 12, 2026), available at https://www.willkie.com/-/media/files/publications/2026/02/finraproposesgreaterflexibilitytoshowtargetandprojectedperformanceincommunicationswiththepublic.pdf.

Third-Party Projections

For projections or targeted returns sourced from third parties, such as private fund sponsors or managers, FINRA stated that, where a third party (affiliated or unaffiliated) has created such performance, FINRA would expect members to continue to meet the requirements of Rule 2210's content standards. According to FINRA, the level of due diligence necessary for members to assess presentations of performance calculated by third parties and used in member communications would depend on the facts and circumstances surrounding the communication. FINRA stated that it would not generally expect a member to independently verify all of the underlying criteria and assumptions. FINRA would, however, expect a member to evaluate the source of the information, assess whether the available information in the projection is supported, and satisfy itself that the presentation meets the general content standards of Rule 2210. Moreover, FINRA stated that 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 (e.g., related to the content standards).

Commentary

The approved rule is a meaningful step toward harmonizing FINRA Rule 2210 with the Marketing Rule. Once the amended rule becomes effective, broker-dealers will be able to use target and projected performance in a manner similar to investment advisers, which should minimize informational disparities depending on whether communications are distributed by a broker-dealer, investment adviser, or issuer. FINRA's removal of the reasonable basis and other disclosure requirements should help reduce the compliance burdens on dual registrants and affiliated broker-dealers/investment advisers in approving marketing materials.

Nonetheless, important differences remain between FINRA Rule 2210 and the Marketing Rule. Namely, FINRA declined to amend Rule 2210 at this time to permit the use of additional types of performance, stating that the rule change represents an incremental approach, declining to address the merits of the requests to broaden the scope of the information covered, and noting that this does not foreclose future potential amendments to adopt standards for other performance categories.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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