american securities association
America's Voice for Main Street's Investors

September 11, 2026

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 26-14; FINRA Requests Comment on Proposed Changes to Modernize Rule 2210 (Communications with the Public)

Dear Ms. Mitchell:

The American Securities Association[1] ("ASA") appreciates the opportunity to comment on Regulatory Notice 26-14 (the "Proposal"), in which FINRA requests comment on amendments intended to modernize Rule 2210 (Communications with the Public). ASA represents regional and mid-size broker-dealers who serve retail investors, businesses, and municipalities across the country. Our member firms operate the retail advertising review and supervisory programs that Rule 2210 governs, and they will bear the direct compliance, staffing, and technology costs of any changes FINRA adopts.

I. **Overview**.

ASA supports FINRA's effort to modernize Rule 2210 to reflect the growth of social media and the increasing use of generative artificial intelligence in the development of retail communications. Modernization is overdue, and a rule framework built primarily around static, pre-use review of print advertising is increasingly disconnected from how member firms and their associated persons actually communicate with the public today.

ASA believes FINRA should ensure that any new framework it adopts preserves strong investor protection while providing firms with a flexible risk-based framework.

II. Supervision of Retail Communications: Replacing Principal Pre-Use Approval with a Risk-Based Standard.

ASA supports the Proposal's shift away from the current default requirement of principal pre-use approval toward a risk-based supervisory standard for retail communications. A supervisory framework that allocates review resources according to actual risk, rather than requiring uniform

[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

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pre-use sign-off regardless of content, better reflects how member firms already manage compliance risk in other areas of their business.

ASA recognizes that this type of risk-based flexibility can also create new issues. A standard that allows different firms to satisfy their supervisory obligations in different ways is, by design, more open to interpretation than the current bright-line rule. This could allow individual examiners to apply the standard inconsistently from firm to firm and exam to exam. To address this, ASA strongly encourages FINRA to further educate and train its examiners about different business models and different means of compliance.

A risk-based standard should allow firms to exclude some categories of communications from review immediately. However, member firms anticipate that a meaningful share of any time saved will be offset by the cost of building and documenting new supervisory procedures, training principals and associated persons on the new risk factors. We also expect firms will need to respond to an increase in internal inquiries from registered representatives asking whether a given communication still requires submission. It may take some time for firms and their personnel to adjust to a risk-based standard and we ask FINRA to be patient as that process unfolds.

During this period, we suggest that FINRA: (1) provide additional guidance and examples illustrating how the listed risk factors should be weighted and how examiners will assess whether a firm's supervisory procedures are "reasonably designed," so that firms are not left to guess at examination standards and so that examination outcomes do not turn on which examiner or exam team reviews a given firm's procedures; (2) recognize, in any economic analysis accompanying a rule filing, that the transition itself carries real upfront implementation and training costs, particularly for smaller and mid-size firms without dedicated advertising-review technology teams; and (3) provide a reasonable implementation period following any final rule to allow firms time to update written supervisory procedures, retrain staff, and adjust surveillance systems before the new standard takes effect.

II. Social Media and the Static/Interactive Distinction.

ASA supports eliminating the current distinction between static and interactive electronic communications for supervisory purposes. In practice, this distinction has been difficult for member firms to enforce because associated persons control their own personal social media profiles and accounts. This limits a firm's practical ability to apply a rigid pre-review standard to that content regardless of how it is categorized.

FINRA's proposed pivot toward a more practical, risk-based supervisory approach for these communications is consistent with how member firms already manage this risk in practice. ASA believes this proposal is a more workable path than continuing to draw supervisory consequences from a static/interactive line that firms cannot fully control at the point of publication.

III. Artificial Intelligence.

ASA member firms currently use generative AI tools to assist marketing personnel in developing retail communications, but firms do not rely on AI to independently produce and publish content absent human involvement. Consistent with that practice, ASA believes any content developed with the assistance of AI should continue to be scrutinized by the individual who directed the AI tool and should be subject to the same risk-based review standard applicable to all retail communications under the Proposal, without regard to whether AI was used in the content's development. Whether a communication is AI-assisted should not, by itself, add to or reduce the scope of principal review beyond what the risk-based framework otherwise requires.

ASA requests that FINRA provide additional guidance on the governance and vetting expectations it intends to apply to member firms' use of AI tools in producing retail communications, including whether and how firms should document their review of AI-assisted content, and whether FINRA anticipates a safe harbor or reduced review standard for AI-assisted communications that fall within defined low-risk categories.

ASA also asks FINRA to address recordkeeping directly in this rulemaking. Where a firm uses AI to help generate a finished retail communication or a direct client communication, ASA requests that FINRA confirm that a member firm's obligation under Rule 4511 and the underlying SEC recordkeeping rules extends only to the final, published communication, and does not extend to the AI-generated drafts, prompts, and iterations that preceded it. Consistent with the treatment of AI-generated drafts as a preliminary aid rather than a communication in their own right, ASA does not believe such drafts and prompts should be deemed books and records subject to retention under Rule 4511, and cautions FINRA against imposing a new retention obligation that extends beyond the final, published communication. Any such expansion would add materially to the documentation burden discussed in Section I above.

FINRA should use this opportunity to clarify what, if anything, firms are expected to retain from the AI-assisted drafting process, and how that expectation applies where a firm's AI tool is provided by a third-party vendor that does not retain prompt or draft history in a form the firm can archive.

IV. Recommendations Standard (Rule 2210(d)(7)).

ASA offers conditional support for aligning the broker-dealer recommendations standard under Rule 2210(d)(7) with the fair-and-balanced approach applicable under the SEC's Investment Adviser Marketing Rule.

ASA's principal concern with this alignment is the risk of someone cherry-picking communications that highlight favorable individual results without a fair presentation of overall performance. ASA urges FINRA to build safeguards into a final rule to combat this risk. Specifically, the rule should require communications presenting a recommendation to also present standardized performance information for the performance of the relevant portfolio or the strategy as a whole. This would be consistent with the content standards for communications under Rule 2210(d). Finally, we would recommend that, where individual holdings are highlighted, the presentation not be limited to favorable results in isolation.

V. <u>Dually Registered Firms and Investment Adviser Harmonization</u>.

Many ASA member firms are dually registered as broker-dealers and investment advisers, and must reconcile Rule 2210 with the separate content and recordkeeping standards that apply to the same communications under the Investment Adviser Marketing Rule.

ASA encourages FINRA to continue working with the SEC to identify additional areas where the two standards can be harmonized, so that dually registered firms are not required to maintain parallel, and at times inconsistent, review and documentation processes for a single piece of content directed at the same retail audience.

VI. <u>Other Items for Comment</u>.

ASA requests that FINRA clarify how the Proposal treats system-generated retail communications, such as automated account alerts and balance notifications. To the extent any new flexibility depends on firms' third-party retail communications archiving and surveillance vendors updating their platforms to support it, ASA asks that FINRA provide sufficient lead time between any final rule and its effective date, so firms and their vendors have adequate time to build and test the necessary system changes.

ASA also welcomes the opportunity to provide operational and administrative process feedback to FINRA's Advertising Regulation Department as part of this modernization effort and would be glad to coordinate a follow-up discussion with member firm compliance staff on that subject.

VII. <u>Conclusion</u>.

ASA appreciates FINRA's continued effort to modernize its communications rules and thanks FINRA for the opportunity to comment on the Proposal. We would welcome the opportunity to discuss these comments further.

Respectfully submitted,

Jessica Giroux

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