



## PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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December 15, 2023

**Via Email Only @ [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

Ms. Vanessa Countryman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: SR-FINRA-2023-016  
Proposed Rule Change to Amend FINRA Rule 2210 (Communications with  
the Public).**

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

In SR-FINRA-2023-16, FINRA proposes to change Rule 2210 (Communications with the Public) to Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications.<sup>1</sup> Currently, Rule 2210 prohibits projections of performance or targeted returns in member communications, subject to specified exceptions. The proposed rule change would allow a member 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 as defined in the Investment Company Act of 1940 (“Investment Company Act”) that promotes or recommends specified non-public offerings, subject to stringent conditions to ensure these projections are carefully derived from a sound basis.

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<sup>1</sup> See Federal Register/Vol. 88, No. 225/Friday, November 24, 2023/Notices

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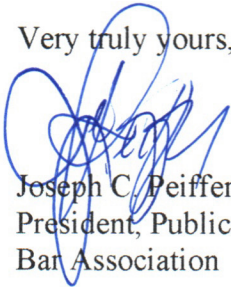
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PIABA strongly believes the “sound basis” requirement should be strictly adhered to and not just be window dressing to further a more liberal standard for communications. To that end, there must be a “reasonable basis for all assumptions, conclusions, and recommendations” contained in the illustration. Only then will FINRA’s stated goal of assuring “the proposed rule amendment allowing projections or performance or targeted returns in specified communications not increase the potential harm to retail investors be met.”<sup>2</sup>

PIABA also feels FINRA must keep a sharp eye on private placement sales abuses as the numbers of persons who can invest in private placements has increased substantially over the last several decades. By way of background, the SEC first established standards for qualifying as an “accredited” investor in 1982. This accredited investor standard included having a \$1 million net worth or an income of \$200,000 per year for individuals (or \$300,000 per year for joint filers). By these standards, in 1982, only 1.8% of American households qualified as “accredited”, while in 2013, this number had risen to 9.9%.<sup>3</sup> In a December 2019 statement, Commissioner Allison Herren Lee estimated that this accredited investor pool will grow to 22.7% of American households in the next decade.<sup>4</sup> PIABA is concerned that this enlarged the pool of “accredited” investors contains an increasing amount of investors that do not have the sophistication or financial wherewithal to adequately ascertain the risks of these investments. As such, due to this increased pool of “accredited” investors that lack the requisite financial sophistication to understand private placements and other non-standard financial products, the current proposed amendment may further increase the potential for abuse as these unsophisticated investors will also lack the financial wherewithal to understand the limitations of financial projections.

In summary, PIABA emphasizes FINRA must be mindful of the challenges accompanying this proposal and devote adequate resources to policing all communications while keeping mindful that any weakening of communication and accredited investor standards will only serve to harm individual investors.

Very truly yours,  
  
Joseph C. Peiffer  
President, Public Investors Advocate  
Bar Association

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<sup>2</sup> *Id.* at pg. 82483.

<sup>3</sup> See Commissioner Luis Aguilar’s Statement on “Revisiting the ‘Accredited Investor’ Definition to Better Protect Investors at fn 3 (Dec. 17, 2014) (available at [https://www.sec.gov/news/statement/spch121714laa.html#\\_edn3](https://www.sec.gov/news/statement/spch121714laa.html#_edn3)).

<sup>4</sup> See Commissioner Allison Herren Lee’s “Statement on the Proposed Expansion of the Accredited Investor Definition” (Dec. 18, 2019) (available at [https://www.sec.gov/news/public-statement/statement-lee-2019-12-18-accredited-investor#\\_ftnref6](https://www.sec.gov/news/public-statement/statement-lee-2019-12-18-accredited-investor#_ftnref6)).