



450 E. 96th Street  
Suite 185  
Indianapolis, IN 46240  
  
317-663-4180 *main*  
[www.adisa.org](http://www.adisa.org)

December 15, 2023

Via Email at [Rule-Comments@Sec.Gov](mailto:Rule-Comments@Sec.Gov)

Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: SR- FINRA-2023-016

Dear Sir or Madam:

The Alternative & Direct Investment Securities Association (ADISA)<sup>1</sup> appreciates the opportunity to comment on the above-referenced proposal by the Financial Regulatory Authority (FINRA) to amend FINRA Rule 2210, “Communications with the Public.”

ADISA’s membership includes retail and managing broker dealers, Securities and Exchange Commission (SEC) and State registered investment advisers and firms that sponsor, manage, and distribute various alternative investments, including REITs and BDCs, and interval funds and energy programs. Many of the programs sponsored by ADISA members are distributed and/or marketed by members who are SEC-registered brokers who are FINRA members.

The instant proposal was first proposed for comments in 2017 when FINRA published Regulatory Notice 17-06 (the “2017 Notice”), requesting comment on proposed rule amendments that would create an exception to Rule 2210’s prohibition on projecting performance to permit members to distribute customized hypothetical investment planning illustrations that include the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified conditions. FINRA received 23 comments in response to the 2017 Notice – twenty-one commenters supported the proposal, and two commenters opposed it.

The current proposal builds on FINRA’s prior efforts to make changes in this regard, as set out in the 2017 Notice. As now constructed, the rule change would allow a FINRA member to project the performance or provide a targeted return with respect to a security, asset allocation or other

---

<sup>1</sup> ADISA is the largest association of the retail direct investment industry in the United States. ADISA has approximately 5,000 members who employ over 220,000 investment professionals, together serving the interests of more than 2 million investors throughout the country. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios.

investment strategy in an institutional communication, or a communication distributed solely to qualified purchasers as defined in the *Investment Company Act of 1940*, as amended, that promotes or recommends specified non-public offerings, subject to stringent conditions to ensure these projections are carefully derived from a sound basis.

In ADISA's opinion, the proposed rule change is, at least, a step in the right direction. In its comment letter on FINRA Regulatory Notice 23-09, in which FINRA asked for comment on various capital markets-related concerns, ADISA voiced support for the proposal set forth in the 2017 Notice. While the rule change effectively limits the newly added flexibility to include projections of performance or targeted returns to "institutional" communications and communications regarding qualified purchaser-only funds and adds several additional procedural requirements, it ultimately will contribute to the mix of information that can be given by FINRA members to potential investors.

Transparency is critical, and ADISA supports efforts to increase transparency in the securities offering process. Allowing performance projections will help investors and their agents better assess both the possible returns associated with an investment as well as potential risks, thus contributing to transparency while enhancing the quality and quantity of information made available to potential investors. We hope that the current proposal leads FINRA to consider, in the future, further changes to Rule 2210 that would expand the number and types of persons (investors) that can be provided projected performance.

For the foregoing reasons, ADISA supports FINRA's proposal to amend Rule 2210. We would be pleased to discuss our comments in more detail if that would be helpful.

Sincerely,



Mike Underhill/MM  
President

Cc: Drafting Committee: John Grady, Catherine Bowman, and John Harrison