

March 15, 2024

J. Matthew DeLesDernier
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 2210 (Communications With the Public) To Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications (File Number SR-FINRA-2023-016)*

Dear Mr. DeLesDernier:

The Investment Company Institute¹ is writing to provide our views on FINRA’s proposed amendments to its rule that regulates communications with the public (Rule 2210, or the “rule”), as modified by Amendment No. 1.²

We reiterate the comments made in our previously-filed December 2023 comment letter and fully incorporate them herein by reference.³ In sum, we believe that performance projections and targets, subject to proper investor protection guardrails, can help inform investors’—including retail investors’—decision-making process. Because the current rule largely proscribes the use of performance projections in communications, adoption of the proposal (with its accompanying

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing regulated investment funds. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$33.4 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.2 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London and carries out its international work through [ICI Global](http://www.ici.org).

² *Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 2210 (Communications With the Public) To Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications*, SEC Release No. 34-99588, 89 Fed. Reg. 14728 (Feb. 28, 2024) (the “amended proposal”), available at www.govinfo.gov/content/pkg/FR-2024-02-28/pdf/2024-04072.pdf.

³ See Letter from Dorothy Donohue and Matthew Thornton, ICI, to Sherry Haywood, SEC, dated December 15, 2023, available at www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-314280-819322.pdf.

J. Matthew DeLesDernier

March 15, 2024

Page 2

investor protection-oriented conditions, which in our view more than suffice) would improve the status quo.

Moreover, we have no objection to FINRA's proposed Amendment No.1 to its November 2023 proposal, which would permit inclusion of performance projections or targets in communications to "knowledgeable employees" (as defined in Rule 3c-5 under the Investment Company Act) involving certain private placements.

While our long-term policy preference remains greater alignment of Rule 2210's provisions related to performance projections and targets with those in SEC Rule 206(4)-1 under the Advisers Act, this amended proposal is a welcome step in that direction. Overall, because the amended proposal is sound and beneficial policy that would protect investors and the public interest, we support its prompt approval by the SEC.

If you have any questions, please contact us at (202) 218-3563 or (202) 371-5406.

Sincerely,

/s/ Dorothy M. Donohue

Deputy General Counsel

/s/ Matthew Thornton

Associate General Counsel

cc: Amy Sochard, Vice President, Advertising Regulation, FINRA
Meredith Cordisco, Associate General Counsel, Office of General Counsel, FINRA