

MEMO# 30584

February 16, 2017

FINRA Requests Comment on Proposed Amendments to Rule 2210

[30584] February 16, 2017 TO: ICI Members SUBJECTS: Advertising
Compliance
Disclosure

Investment Advisers RE: FINRA Requests Comment on Proposed Amendments to Rule 2210
FINRA has issued a Regulatory Notice requesting comment on proposed amendments to Rule 2210 (Communications with the Public)(the “Rule”).[\[1\]](#) Specifically, the proposed amendments would permit firms to distribute an investment planning illustration that includes the projected performance of an asset allocation or other investment strategy (but not an individual security), subject to specified conditions. Comments are due by March 27, 2017.

The Rule generally prohibits communications that predict or project performance, subject to certain exceptions.[\[2\]](#) The proposed amendments would create another exception to this general prohibition, for a “customized hypothetical investment planning illustration that projects performance of an asset allocation or other investment strategy and not an individual security.” Use of this exception would be conditioned upon (i) there being a “reasonable basis for all assumptions, conclusions and recommendations;” and (ii) providing clear and prominent disclosure that the illustration is hypothetical; that there is no assurance that the performance or event will occur; and that includes all material assumptions and limitations.

The Notice emphasizes the following:

- The illustration must be “customized,” *i.e.*, designed for a particular client or multiple clients who share an account.
- The illustration may not project the performance of an individual security (although firms could continue to provide estimated annual income and estimated yield in customer account statements for individual securities, consistent with prior FINRA guidance).
- A “reasonable basis” could be established “by reference to the historical performance and performance volatility of asset classes, the duration of fixed income investments, the effects of macroeconomic factors such as inflation and changes in currency valuation, the impact of fees, costs and taxes, and expected contribution and withdrawal rates by the customer;” by contrast, basing a projection on hypothetical back-tested performance or the past performance of particular investments by an asset manager would *not* be reasonable.

The proposed amendments also would include related supervisory requirements. They

would require a registered principal to either (i) review and approve each illustration before use or distribution, or (ii) review and approve each illustration template before use or distribution, and supervise and review the illustrations in the same manner as correspondence under Rule 3110 (Supervision).

Matthew Thornton
Assistant General Counsel

endnotes

[1] *FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public*, FINRA Regulatory Notice 17-06 (February 2017) (the “Notice”), available at:
http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf.

[2] Specifically, the Rule permits hypothetical illustrations of mathematical principles, investment analysis tools, and price targets in research reports.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.