

FINRA Proposes to Loosen Restrictions on Performance Projections

June 23, 2017

In March, FINRA solicited comments on proposed amendments to Rule 2210, Communications with the Public, that would create an exception to the rule's prohibition on projecting investment performance. The proposed exception would permit broker-dealer firms to provide clients with customized hypothetical investment planning illustrations that include the projected performance of an "asset allocation or other investment strategy." It would not, however, permit such illustrations for an "individual security" or that are not "designed for a particular client or multiple clients that share an account." The proposed exception is of interest to many life insurance companies, as it could potentially be available for asset allocation or investment strategies that include, or are offered within, life insurance or annuity products. Moreover, the proposal does not appear intended to modify other applicable FINRA rule provisions and guidance applicable to variable insurance product illustrations. FINRA expects these amendments to particularly assist FINRA-registered firms or representatives that are also subject to investment adviser regulation by the SEC. Historically, broker-dealers have been subject to more restrictive regulation of projections than investment advisers, and the proposed amendments may simplify such dual registrants' compliance strategy and minimize costs by better aligning the different regulatory schemes to which their projections are subject. FINRA also anticipates that most of the approximately 20 firms that currently file "investment analysis tool" communications with FINRA would take advantage of the proposed amendments to also distribute customized hypothetical investment planning illustrations. FINRA also believes that many other firms providing products and services to retail investors would likely choose to rely on the proposed exception. The proposed exception would be subject to several conditions, including that all material assumptions and limitations applicable to the projection be disclosed and that there be a reasonable basis for all assumptions, conclusions, and recommendations.

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