

March 27, 2017

Marcia E. Asquith
Office of the Corporate Secretary
FINRA 1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA’s Regulatory Notice 17-06 (“RN 17-06”) request for comments regarding proposed amendments to FINRA Rule 2210 (Communications with the Public)

Dear Ms. Marcia Asquith:

The Investment Program Association (“IPA”) respectfully submits this letter in response to the request for comments by the Financial Industry Regulatory Authority (“FINRA”) on RN 17-06 (regarding proposed rule amendments to FINRA Rule 2210 (Communications with the Public)). Our intent is to provide comments we believe will improve the information provided to investors to assist them with decision making in regards to asset classes and investment strategy.

FINRA’s PROPOSAL:

FINRA is seeking information on allowing financial professionals affiliated with FINRA the ability to distribute a customized hypothetical illustration that may include the projections regarding asset allocations or other investment strategies, but not an individual security.

IPA’s POSITION:

The IPA appreciates FINRA’s proactive consideration of the proposed amendments to Rule 2210. We would like to address the current proposal and also suggest a second modification that aligns with the progressive nature of these amendments.

First, we strongly advocate for the approval of the proposed rule amendments for these reasons:

- Providing investors additional information about asset classes under various hypothetical scenarios can assist an investor in making an informed decision.
- If the Department of Labor Fiduciary Duty Rule is enacted as written, it appears that projections will need to be provided with the retirement plan statements.
- In its current form, FINRA 2210 creates inequality among investors and the professionals who serve their needs.
 - FINRA 2210 creates an information disadvantage to certain investors with accounts serviced at broker-dealers.
 - The rule creates a competitive disadvantage to financial professionals affiliated with FINRA by disallowing the use of projections. Conversely, the SEC’s



- Investment Advisers Act does allow investment advisers to use projections, so long as there is a reasonable basis and the valuation methods are clearly disclosed.
- With the industry trending towards financial professionals who are dual registrants, and which operate as both an investment adviser representative and a registered representative, it is appropriate for FINRA’s proposed rule amendments on projections to be aligned with the SEC rules in order to provide equal benefits to all investors, regardless of their financial professional’s registration or affiliation.

Secondly, we would suggest further harmonization of Rule 2210 by exempting communications made by broker-dealers strictly to “institutional investors” from the Rule’s prohibition of projections.

- FINRA’s new broker-dealer status for Capital Acquisition Brokers (“CAB”), which are firms that market debt or equity private placements to institutional investors, relieves CAB firms of several regulatory requirements. However, CAB status is not available to firms that offer retail products. As such, firms that distribute both private placements with institutions and offer retail products cannot take advantage of the CAB status benefits.
- One of the benefits of CAB status is to offer an exemption from Rule 2210 prohibitions on the use of projected returns in the marketing of private placements to institutional investors. This would put firms that do not elect CAB status at a competitive disadvantage in the marketing of their offerings. The FINRA proposals outlined in RN 17-06 do not specifically offer such exemption. If FINRA allows this exemption, it appears no investor protection is foregone by providing projections to “institutional investors” when the fund’s targeted returns are typically presented in the offering memorandum.

The IPA believes that retail investors would benefit from transparent performance information regarding asset allocations or other investment strategies, and strongly supports the proposed amendments to FINRA Rule 2210.

Sincerely,



Anthony Chereso
President & CEO, Investment Program Association