



NORTHCAPITAL
PRIVATE SECURITIES

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May 22, 2025

VIA EMAIL

pubcom@finra.org

FINRA – Office of the Corporate Secretary
Attention: Jennifer Piorko Mitchell, Vice President of Corporate Governance and Deputy
Corporate Secretary
1700 K Street, NW
Washington, DC 20006

**Re: Regulatory Notice 25-04 (FINRA Launches Broad Review to Modernize Rules Regarding
Member Firms and Associated Persons) – Member Feedback on FINRA Rule 2210
(Communications with the Public)**

Dear Ms. Mitchell:

Thank you for the opportunity to respond to this Regulatory Notice 25-04, soliciting member feedback regarding key areas where FINRA's rules or related regulatory requirements may affect or create unnecessary challenges for member firms' support of capital formation. We wish to address part (3) of this request, (3) other NASD or FINRA rules, guidance and processes impacting capital raising.

North Capital Private Securities Corporation (NCPS) has been involved in private securities markets since registering with the Securities and Exchange Commission and becoming a member of FINRA in 2011, and I have personally worked in public and private markets since 1985. NCPS and its affiliates have been involved in over 3,950 public and private exempt offerings as an agency broker-dealer, placement agent, subscription escrow facilitator, ATS, or technology services provider, with over 2.2 million transactions and nearly \$8 billion of volume. Most of our primary offering business has been with retail accredited investors in exempt offerings issued under Regulation D, Rule 506(c). From its inception, NCPS has operated as a registered intermediary because of our conviction that broker-dealers play a critical role in vetting deals and sponsors and in promoting full disclosure, fair markets, and investor protection.

The central tenet of U.S. securities regulations for over 90 years is that they are rooted in a disclosure-based system. Regulations are designed to ensure that investors have access to complete information about issuers and their offerings, based on the premise that an informed investor can make their own investment decisions given a fair, balanced and complete presentation of the key elements and risks of an investment offering.

I write today to respectfully request a revision or withdrawal of FINRA’s expansive interpretive guidance related to Rule 2210, which undermines this principle and is counterproductive to the objective of full and fair disclosure. The text of Rule 2210(d)(1)(F) states:

“Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

- (i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;*
- (ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and*
- (iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.”*

The Rule as it is written is not problematic. A prediction or projection of the performance of a specific investment is generally not warranted, and on this point most investment professionals would agree. However, the interpretive guidance issued in Regulatory Notices, FAQs,¹ in direct review of advertising submissions, and during the member examination process, goes far beyond the letter of Rule 2210.

Any reference to an investment performance metric, in any context and however well-qualified, is considered by FINRA to be “misleading” and a “prediction or projection.” The terms “prediction” and “projection” have been wrongly conflated with “target” and “objective,” an overreaching interpretation of the Rule that is harming investors.²

Many individual investments and most real estate projects are underwritten to a particular return objective. Investors deserve to know what that return objective is, especially when they directly

¹ See Regulatory Notice 20-21 (FINRA Provides Guidance on Retail Communications Concerning Private Placement Offerings) (July 2020); Regulatory Notice 04-86 (SEC Approves NASD Interpretive Material to Rule 2210 Regarding Member Firms’ Use of Investment Analysis Tools) (Nov. 2004); Frequently Asked Questions About Advertising Regulation – FINRA Rule 2210 Interpretive Guidance, Q&A D.7. *Prohibition on Predictions or Projections of Investment Performance* (9/30/2021) at <https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation>.

² FINRA has indicated that a well-qualified statement with a numeric return objective, even when accompanied by a statement that such objective is a goal and is not and should not be considered a prediction or projection, and regardless of whether such objective is stated in the prospectus, violates Rule 2210(d)(1)(F).

ask for it. An objective is not a prediction, it is not a projection, and quantifying a return objective does not suggest or imply that the investment will achieve the objective. Stating a return objective is not misleading. It is trivial to qualify such statements with appropriately balancing disclosures, such as: *“There is no guarantee that the return objective will be achieved. The return objective is not and should not be considered a prediction, projection, or estimate of performance of the investment, which is subject to the risk of loss in its entirety.”*

Not being able to present a return objective for a project-style investment is antithetical to market convention in real estate investing, as well-underwritten deals routinely include a stated return objective, a detailed financial model, and robust risk disclosures and qualifying statements as central elements of the offering package. Moreover, omitting critical information such as the return objective of a project is insulting to the intelligence of investors, who are implicitly viewed as too unsophisticated to understand that an investment objective is not the same as actual return, even though FINRA has now acknowledged that qualified purchasers may need to know this information.

Finally, the interpretive guidance around Rule 2210 is broadly considered by most investment professionals to be so wildly off-market that many prospective issuers simply choose not to work with a broker-dealer rather than submit to Rules that are out of step with common sense and common practice. Investors are more likely to be harmed when an issuer who is predisposed to work with a broker-dealer decides not to, because it means that no due diligence on the offering will be conducted, no investor suitability reviews will be performed, and no safeguarding of customer funds will be undertaken by a regulated entity. And when outside the purview of FINRA oversight, investors will ask for and receive a statement of the return objective from the sponsor, generally with fewer and possibly incomplete disclosures.

FINRA has recognized that the inclusion of performance metrics for Projection-Eligible Investors should be permitted, and it has proposed an amendment to Rule 2210 to allow such use.³ However, this proposed amendment does not go far enough. The core issue is not the sophistication of the audience, it is the definition and scope of “prediction or projection,” which has been inappropriately expanded through interpretation to cover all references to targets and objectives, regardless of how well-qualified the analysis and references might be.

Revising or withdrawing this guidance would allow for a more sensible framework: one that recognizes that all investors have an interest in understanding the risk and return objectives, expressed in quantitative terms, of investments they are considering. Moreover, ensuring that FINRA rules do not push issuers away from the regulated ecosystem of broker-dealers would enhance investor protection and market integrity.

³ Release No. 34-98977; File No. SR-FINRA-2023-016 (November 17, 2023).

Office of the Corporate Secretary – FINRA

RE: Regulatory Notice 25-04 - FINRA Launches Broad Review to Modernize Rules Regarding
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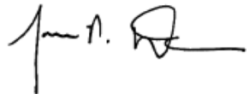
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Thank you for your consideration.

Sincerely,

North Capital Private Securities Corporation

A handwritten signature in black ink, appearing to read "J. P. Dowd", with a stylized flourish at the end.

James P. Dowd, CFA, President and Chief Executive Officer