



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

June 19, 2017

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Special Notice, Engagement Initiative

Dear Ms. Piorko Mitchell:

On March 21, 2017, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on potential enhancements to certain engagement programs (Special Notice).¹ The Special Notice is part of an initiative to evaluate various aspects of FINRA operations and programs, in this case its engagement with member firms, investors, and other stakeholders, to identify opportunities to more effectively further its mission of investor protection and market integrity.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds FINRA for undertaking a review of its operations and programs and for including industry participants and stakeholders in the process. FSI appreciates FINRA's efforts to engage effectively with its member firms and offers constructive feedback and suggestions below.

Background on FSI Members

FSI is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

¹ Special Notice: Engagement Initiative, FINRA Requests Comment on Potential Enhancements to Certain Engagement Programs (March 21, 2017) available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Special-Notice-032117.pdf

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "advisor" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.⁴

Discussion

FSI appreciates the opportunity to offer feedback and suggestions on how FINRA can more effectively engage with member firms, investors, and other stakeholders. To inform our comments, FSI surveyed both IBD firm members and financial advisor members. Overall, FSI members expressed concern that by focusing its investor outreach on avoiding bad actors, FINRA is unintentionally making investors associate financial advisors with bad intentions and in turn vilifying the industry. In reality, financial advisors play an important role in investor education and we suggest that FINRA shift its focus to the value of seeking financial advice and the tools FINRA provides to investors to identify an advisor they want to work with. Further, FSI members noted that FINRA's industry outreach is focused at the firm level, overlooking registered representatives and associated persons of IBDs. As one of the only trade associations that has individual financial advisor members, FSI can play a key role in facilitating outreach between FINRA and financial advisors, whose perspective comes from direct interactions with investors and who are directly impacted by FINRA rules and regulations. Feedback from both FSI member firms and financial advisors raised both overlapping and separate concerns. For example, firm compliance staff report that Weekly Update emails are very helpful and useful, while many financial advisors are unaware of the email subscription service. Both advisors and firms report that FINRA's interactive tools are helpful to investors and they refer clients to the calculators and Mutual Fund Breakpoint tool.

We offer additional detail on our survey of our members and respond to the questions posed in the Special Notice below.

I. Engagement Through Committees

The Special Notice explained that FINRA uses various committees to facilitate engagement with member firms and representatives of the public to identify emerging issues and understand

⁴ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

the various business models of its member firms. Sixteen FSI members currently serve on FINRA District Committees reporting them to be useful and effective and describe their experience as positive and fulfilling. While the Advisory, *Ad Hoc* and District Committees are an important means of receiving constructive feedback, FSI notes the lack of transparency regarding the Advisory Committee process. FSI also notes a lack of Registered Representative members' voices in the engagement process.

A. Increased Transparency in Advisory Committee Process

The Advisory Committees are an important means of receiving constructive feedback on rule proposals, regulatory initiatives, and industry issues. However, many FSI members pointed to the lack of transparency regarding participation the Advisory Committee process, saying it is unclear how interested industry members could apply to participate. Further, the agenda for the Advisory Committee meetings is only released after the meeting has already taken place. FSI suggest that circulating the issues to be discussed beforehand and allowing industry input or question submission would improve transparency and increase industry engagement. Additionally, transparency on how to become a member of the Advisory Committee would also benefit both FINRA and the industry.

B. Registered Representative Committee

The Special Notice requested input as to whether the current committees enable sufficient engagement with the different types of FINRA members including those with different business models; and whether there are additional areas not addressed by existing committees. The industry outreach described in the Special Notice appears to be focused on firms alone rather than including their Associated Persons or Registered Representatives. In order to engage more effectively with a wider section of FINRA's membership, FSI suggests forming a Registered Representative Advisory Committee. While input from the firm level is important, advisors interact with investors every day and can provide valuable feedback as to what issues they encounter most often. Financial advisors also play a key role in investor education. As one of the only trade associations with financial advisor members, FSI stands ready to work with FINRA to improve its engagement with financial advisors to ensure that their unique perspective is considered.

II. Engagement in Connection with Rulemaking

FSI appreciates FINRA's thorough engagement in the rulemaking process by offering more opportunities for public comment on rule proposals before they are submitted to the SEC. The Regulatory Notice process allows member firms and other stakeholders to offer valuable input and alternatives in a way that facilitates discussion before the proposal is filed with the SEC and again published for comment. This two-step comment process promotes industry engagement and regulatory transparency. The 45-day comment period is typically sufficient to allow for comment on Regulatory Notices. In some cases, depending on the scope of the rule, firms may wish to engage internal or outside counsel to assist in drafting their comments or they may need sufficient time to gather meaningful data or information. As several commenters observed, a 45-day comment period was insufficient to provide well informed, substantive feedback in response to this

Special Notice.⁵ We suggest that more in-depth Regulatory Notices be open for at least a 60-day comment period to allow for more thoughtful engagement.

A. Meaningful Interpretive Guidance of Rules

FSI members ask that FINRA provide more meaningful interpretive guidance regarding its rules for instance through the use of specific FAQs. FINRA may also consider creating a list of “Frequently Cited Deficiencies,” or areas where firms are often incorrectly interpreting rules. In some cases, our member firms have reported that FINRA examination staff have disagreed with interpretive guidance provided by FINRA’s Office of General Counsel. There is also a perception that interpretive guidance is not applied consistently from district to district, causing confusion for member firms. In order for guidance to be meaningful, it must be transparent and consistent.

B. Additional Transparency in Retrospective Rule Review Process

FSI commends FINRA for undertaking retrospective review to ensure regulations are appropriately designed to achieve their objectives. FSI has offered constructive feedback on the Proposed Amendments to FINRA’s Rules Governing Communications with the Public,⁶ Gifts, Gratuities and Non-Cash Compensation,⁷ and will offer comments on the Retrospective Rule Review of the Rules on Outside Business Activities and Private Securities Transactions.⁸ FSI and its member firms support the review of existing rules, including whether the costs and benefits have been in line with expectations, which is essential to efficient regulation. We suggest the retrospective rule review process could be improved by making it more transparent. For example, the Special Notice mentions that a formal survey was issued to FINRA’s membership, but none of FSI’s member firms reported receiving it.⁹ FINRA seems to be aware of this issue saying, “staff understands that some members were not aware of the issuance of the survey.” Maximizing member participation is key to ensuring the full benefits of these surveys to the retrospective rule review process. One solution could be adding a link to the survey to FINRA’s Firm Gateway notification system and allowing firms who have not received it to voluntarily take the survey or even just provide input. FINRA might consider alerting member firms’ Executive Representative and Chief Compliance Officer (CCO) to these types of important opportunities to provide input, as our members have observed that emails sent to the firms’ CEO do not always make it down the management chain to the person in the best position to provide useful input and information.

III. **Engagement Through Member Relations, Education and Compliance Resources**

FSI member firms and their compliance staffs are very aware of the compliance resources

⁵ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Vice President and Deputy Corporate Secretary, FINRA (April 10, 2017) available at: http://www.finra.org/sites/default/files/notice_comment_file_ref/SN-32117_SIFMA_comment.pdf

⁶ Letter from David T. Bellaire, EVP and General Counsel, Financial Services Institute to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (March 27, 2017) available at http://www.finra.org/sites/default/files/notice_comment_file_ref/17-06_FSI_comment.pdf

⁷ Letter from David T. Bellaire, EVP and General Counsel, Financial Services Institute to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (September 23, 2016) available at http://www.finra.org/sites/default/files/notice_comment_file_ref/16-29_Bellaire_comment.pdf

⁸ Regulatory Notice 17-20, Retrospective Rule Review: FINRA Requests Comment on the Effectiveness and Efficiency of Its Rules on Outside Business Activities and Private Securities Transactions (May 15, 2017) available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-20.pdf

⁹ Special Notice, *supra*. note 1, at 15.

from FINRA and generally find them to be helpful. Our members report that the compliance tools and resources available are particularly valuable for obtaining a broad overview of the regulatory requirements. We encourage FINRA's Member Relations and Education Department (MRE) to work with firms to identify common questions and issues to address, and resources to provide in greater detail.

IV. Engagement Through Investor Education

FSI's members find FINRA's existing investor tools and resources are very helpful, but many financial advisors are unaware of them and thus do not use them. FSI financial advisor members reported using the interactive tools and calculators. In fact, many financial advisors report they direct their clients to the calculators, particularly the Retirement Calculator and the Fund Analyzer. A significant number of financial advisor members said they would refer clients to interactive tools and resources they became aware of through this Special Notice. This indicates the tools are useful but more financial advisors need to be aware of them. FSI suggests that to ensure advisors are directing their clients to these useful, interactive tools, FINRA consider an education campaign particularly focused on financial advisors. Further, feedback from FSI's firm and financial advisor members indicates that many advisors are unaware that they can subscribe to email updates, while the Weekly Update email is well known and valued among firm staff. Financial advisors play an important role in investor education and we suggest that FINRA improve its industry outreach by including registered representatives and associated persons of IBDs. FSI is happy to assist in facilitating outreach between FINRA and its financial advisor members through education and training.

A. FINRA Investor Outreach and Negative Perception of Industry

FSI and its members believe that financial advisors are the best means of investor education and that all individuals, regardless of their level of wealth, should have access to competent and affordable financial advice. There is a perception at both the firm and financial advisor levels that FINRA's messaging places too much emphasis on bad actors, making investors afraid to seek professional advice. Yet study after study shows that investors who work with financial advisors greatly benefit from that professional investment advice because they are better prepared for retirement and other financial needs than their peers who do not work with a financial advisor. A study released by Oliver Wyman in July 2015 found that investors working with a financial advisor had a minimum of 25% more assets than non-advised individuals, irrespective of age and income levels.¹⁰ A 2012 survey conducted by LIMRA found that investors working with a financial advisor are more likely to be saving for retirement at higher rates (defined as contributing more than 7% of their salary to a retirement plan) than those not working with a financial advisor.¹¹ A study by TIAA-CREF showed that those with high financial literacy prepare for retirement and have double the wealth of people who are not financially literate.¹² While education is an

¹⁰ Oliver Wyman, The Role of Financial Advisors In The Us Retirement Market 6, 16 (Jul. 2015), available at <http://fsroundtable.org/wp-content/uploads/2015/07/The-role-of-financial-advisors-in-the-US-retirementmarket-Oliver-Wyman.pdf>

¹¹ See LIMRA, Advisors Positively Influence Consumers' Behavior and Sentiment Toward Preparing for Retirement (Jul. 11, 2012), http://www.limra.com/Posts/PR/News_Releases/LIMRA_Advisors_Positively_Influence_Consumers_Behavior_and_Sentiment_Toward_Preparing_for_Retirement.aspx

¹² See the TIAA Institute-GFLEC Personal Finance Index: A New Measure of Financial Literacy available at <https://www.tiaainstitute.org/publication/personal-finance-index-new-measure-financial-literacy>

important part of FINRA's investor protection mission, it should encourage investors to seek advice rather than focusing solely on spotting bad actors. In his remarks at the recent FINRA conference, Robert Cook acknowledged the need to help the public understand that "this is not an industry of bad actors," rather FINRA helps firms hold themselves to high compliance standards.¹³ FSI encourages FINRA to pivot their current awareness campaigns away from bad actors and more toward the value of advice and how investors can find a qualified financial advisor with which to build a relationship.

B. Senior Helpline

FINRA's Securities Helpline for Seniors is a valuable resource for investors but FSI member firms believe its mission can be expanded to improve protections for senior investors. There is a perception among financial advisors that the helpline is focused on advisor abuse of their clients, when seniors are most vulnerable to abuse by family, friends and caregivers. We suggest opening the Helpline to advisors and firms as a way to confidentially seek advice regarding suspected abuse of senior clients as many financial advisors do not know where to turn with concerns of abuse of their senior clients without exposing themselves to liability. Further, FSI also suggests providing additional training for Helpline staff regarding the role of Adult Protective Services when abuse by a caregiver is suspected.

V. **Reporting on FINRA Operations**

For several years, FSI has been committed to advocating for enhanced transparency in the governance structure, financial decision making, and other operations of FINRA. Similar to our suggestions for increasing transparency of the District, Advisory and *Ad Hoc* Committees, we recommend providing more information about Board of Governors meetings in advance to allow industry input. While providing a list of rulemaking items to be discussed is helpful, it does not provide a complete picture of Board activity. Agendas for meetings of the Board of Governors and other committees should be published on the FINRA website and sent via email to interested parties well in advance of such meetings. FINRA members should be encouraged to share their thoughts on the agenda items with their respective committees and the Board of Governors prior to the meetings. FSI appreciates that discussions at these meetings should remain private to promote candid debate. However, conclusions reached and follow up items agreed to could be published to members in a timely fashion to increase transparency and promote the idea that prior input from non-committee and Board of Governors members is welcome and useful.

A. Examination and Enforcement Programs

Improving exam consistency, transparency and efficiency is of great importance to FSI members. Both financial advisors and firms find the information provided in the Annual Priorities Letter helpful. However, many firms report that examination staff are inconsistent in its application. FSI members believe FINRA can greatly improve the exam program by implementing a systematic means of testing for consistency of rule interpretation and more closely coordinating examination efforts among District Offices and with the SEC. Specifically, we recommend that FINRA create a post exam survey that seeks to identify inconsistent interpretations and other exam process inconsistencies. The survey would allow FINRA to identify which rules are not being

¹³ Robert Cook, President and CEO, FINRA, Keynote Remarks at the 2017 FINRA Annual Conference (May 17, 2017).

applied consistently, which districts or examiners are frequently involved in such inconsistent interpretations, and whether the regular exam processes are being followed.

We commend FINRA for providing firms with regular exam status reports every 30-days. However, our firm members report that these updates often simply involve the examiner reporting every 30 days that the exam is still in process with no additional information provided on what is holding the exam up or when it may be closed, leaving firms frustrated and unsure of when they can redirect limited resources to other efforts. We encourage FINRA to include more information to firms regarding what could be causing the delay and when they expect the exam to be closed out. The update could also include a list of outstanding information requests or other issues that must be resolved in order to move the examination to closure. These reports will allow firms and FINRA to maintain a consistent line of communication and provide broker-dealers additional transparency into the process.

FSI member firms perceive that FINRA is choosing in many respects to regulate through enforcement, which is an inefficient and ineffective regulatory tool and erodes member confidence in enforcement. The enforcement program is designed to advance investor confidence and protect investors.¹⁴ However, recent developments in fines have lead members to believe that enforcement has moved away from investor protection and is now actively creating standards and rules outside the rulemaking process.¹⁵ Furthermore, some FSI members report that they feel the threat of large fines is being used to force them to sign AWCs. The drastic rise in fines combined with lower restitution rates tend to show that FINRA is using the enforcement mechanism to regulate members rather than make investors whole.

B. Dispute Resolution Programs

FSI applauds all of the many efforts FINRA has made to improve the effectiveness, fairness, and efficiency of the FINRA Dispute Resolution Program. FINRA has undertaken important changes after thorough collaboration with the industry and public. However, there remains a general sentiment among FSI members that the dispute resolution process lacks operational transparency. FSI believes FINRA can increase the operational transparency of the Dispute Resolution program by promoting awareness of the tools available to parties. The dispute resolution webpage provides an overview of arbitration and mediation; information on how to file a claim; forms that parties and arbitrators need in the arbitration process; arbitrator and mediator application and certification information; the Codes of Arbitration Procedure; and rule filing information. While this is all very helpful information, many FSI members are unaware that these tools exist, and FSI suggests that FINRA make a concerted effort to raise awareness of the features of FINRA's dispute resolution webpage. Making FINRA members more aware of the tools available to them through the dispute resolution webpage will help foster a better working relationship between FINRA and the industry.

VI. **Other Communications, News and Reporting**

FSI member firms find the FINRA Weekly Update email to be very helpful. Specifically, many Chief Compliance Officers require their staffs to subscribe, read, and be aware of them.

¹⁴ See FINRA Enforcement Program, available at <http://www.finra.org/industry/enforcement>.

¹⁵ "Annual Eversheds Sutherland Analysis of FINRA Cases Shows Record-Breaking 2016" (February 2017), available at <https://us.eversheds-sutherland.com/NewsCommentary/Press-Releases/197511/Annual-Eversheds-Sutherland-Analysis-of-FINRA-Cases-Shows-Record-Breaking-2016>.

However, individual financial advisors were unaware of the Weekly Update and expressed interest in a monthly update email of their own. FINRA's engagement with respect to communications, news, and reporting is very helpful to firms, but could be expanded to reach individual financial advisors who engage directly with investors. Examples of useful information that could be included in a financial advisor update include new e-mail phishing schemes to be aware of, cybersecurity updates, enforcement actions against registered persons, advice on spotting senior financial abuse, and other useful information specific to financial advisors.

Lastly, FSI members have expressed concerned with the tone of some of the advertisements run by FINRA promoting BrokerCheck. BrokerCheck is an important tool for investors and FSI members fully support the appropriate reporting and censure of bad actors in the BrokerCheck system. However, FSI is concerned that the negative tone of the advertisements seemingly denigrates all advisors as bad actors, which is not accurate, nor what we believe FINRA intended. Running advertisements in this vein has the additional consequence of frustrating the amicable working relationship FINRA seeks with the industry. FSI members are working tirelessly on behalf of their clients and want their value to be recognized through FINRA promotional efforts. FINRA should keep these concerns in mind when developing further public communications. FSI suggests that FINRA promote the value of advice and the benefits of working with FINRA members who hold themselves to higher standards. FSI has attached several examples of potential changes to previous FINRA advertisements that would pivot the focus of the advertising.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a stylized "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel