April 26, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506
E-mail: pubcom@finra.org

Re: FINRA Regulatory Notice 22-08

Dear Ms. Mitchell:

Thank you for FINRA's efforts to serve and protect investors, and for this opportunity to comment on Notice 22-08.

I have been in financial services profession for 37 years, and am founder of both the Digital Assets Council of Financial Professionals and The Truth About Your Future LLC. Through my companies, I teach both consumers and financial advisors about personal finance – via my national radio show, podcast and videocast; books; monthly newsletter; and events. I'm also the founder of Edelman Financial Engines, the largest independent financial planning and investment management firm in the nation, now serving 1.3 million households with about $300 billion in assets under management.

FINRA is correct that investment products have gotten very complex. Long gone are the days investor options were solely stocks and bonds. Today, a myriad of products exists, often with confounding structures, investment strategies, fee schedules, liquidity restrictions and tax implications. As FINRA well knows, far too many consumers purchase investment products that they don't understand, often because their decisions are based on hearsay or slick marketing pitches. Indeed, the vast majority of Americans are financially illiterate, including most investors – as evidenced by every study done on the subject, including those conducted by FINRA.

I've been in the fight to improve our nation's financial literacy for nearly 40 years, having worked for decades with the Employee Benefit Research Institute, Jumpstart Coalition for Personal Finance Literacy, American Savings Education Council, America Saves!, and others. Four years ago, I founded the Funding Our Future Coalition; with more than 75 corporate, academic, non-profit and think-tank members, it's now the largest coalition ever formed to help Americans achieve financial security. Thanks to my deep involvement in this movement, and my many years as a FINRA-licensed financial advisor, I can say with some authority that FINRA is correct to acknowledge that investment-product complexity has exceeded the knowledge base for most investors, and that efforts are indeed needed to reduce this gap.

However, the idea of requiring investors to pass a competency exam is fatally flawed. Testing investors before they invest so they can prove they have the knowledge required to make informed investment decisions is completely unworkable. Any attempt to implement would create havoc in the marketplace, disrupt the entire asset management industry, and materially harm millions of Americans who are striving to save for retirement.

Basic questions about the idea include:

- Who will create the training materials to help investors prepare for the exam?
- Who will write the exam's questions?
- How many questions will the exam contain?
- Will the questions be yes/no, true/false, multiple choice, fill-in-the-blank, or open comment?
- Who will craft the answers to the questions? Will the answers be truly focused on ascertaining knowledge, or will the answers instead be designed to trap and trick test-takers (such as by using double-negatives, and multiple-choice answers that allow for multiple positives)?
- How much time will an investor be provided to complete the exam?
- What will be the test-taking mechanism? Must the investor go to a specific location, or can the exam be taken in their home or office?
- Will the exam be conducted on paper, like the SAT, or online using a computer or smartphone?
- Will the exam be proctored? How will fraud be prevented?
- How will FINRA prevent the exam questions and answers from being distributed over the internet through illicit means?
- What score will be required to be deemed to have passed the exam? In other words, how much knowledge is FINRA allowing an investor to *not have* and still be permitted to invest?
- Will the questions be focused on a specific investment, a broader class of investment, or the entire investment management realm?
    - If narrowly focused:
        - Will the questions allow test-takers to demonstrate their knowledge of Modern Portfolio Theory and other strategies that encourage risky investments as part of a diversified portfolio?
        - Will there be different exams for each investment or class of investment? How many exams must an investor pass?
- Will questions deal with concepts not directly related to any specific investment, such as portfolio rebalancing and dollar cost averaging?
- Will questions be adjusted for those who are investing in tax-sheltered accounts such as IRAs and 401(k)s?

- Who will determine that the questions are relevant, correctly phrased and that they comprehensively comprise all the issues that investors face?
- In most households, one partner manages the finances. But if a married couple opens a joint account, will both spouses be required to pass the exam? What happens if one fails?
- How will the exam be administered to those who have disabilities or other issues affecting their ability to complete examinations?
- Proficiency erodes over time, partly as knowledge is lost, and partly because of an ever-changing economic and product environment. So, how often must an investor take an exam?

All of these questions must be answered – and not merely for what FINRA calls "complex investments" but for *every* investment. That's because there is no such thing as an investment that is not "complex." Every investment requires extensive knowledge. For example, every investment product deals with:

- **Account registration.** Does the investor understand the legal implications of opening an account in their name only, versus an account with a spouse as a Joint Tenants With Rights of Survivorship, an account held with others as Tenants in Common, a trust account, a Section 529 College Savings Account, an account under the Uniform Transfers to Minors Act, an IRA (Deductible, Non-Deductible or Roth), an LLC, C-Corporation, S-Corporation or other registration?
- **Taxation.** The account registration impacts annual and eventual federal and state tax liabilities, and potential IRS penalties. These include income taxes, capital gains taxes and estate taxes – at both the federal and state level.
- **Liquidity.** Many financial products, even including many bank Certificates of Deposit (such as brokered CDs), have withdrawal restrictions – for as much as ten years or more. Investors who don't know this could lose access to their money, incur unexpected fees or lose earned interest.
- **Issuer Solvency.** The return of capital for many financial products, such as bonds and fixed annuities, are subject to the ability of the issuer to pay upon maturity or the demand of the account holder.

Also, there is extensive literature showing that standardized tests are biased against women, minorities and immigrants (see: https://www.ivyscholars.com/2021/06/11/are-the-sats-biased/). Requiring millions of people to take exams could prevent them from participating in the financial markets and interfere with their ability to achieve financial security.

Finally, if testing were implemented, what would happen to an investor who fails the exam? Must they liquidate their current investments – and incur whatever taxes, penalties and surrender charges are incurred?

We have a financial illiteracy problem in our nation, but forcing investors to pass an exam in order to be permitted to invest is not the way to resolve it. Asking consumers to pass a test proving they are knowledgeable about investments before they can invest is like asking patients to pass a test about health care before they are permitted to swallow a pill.

There's a better, easier way to solve FINRA's concern – a solution that is already in place. FINRA should encourage investors to rely on the services of a professional financial advisor. Advisors are already required to pass an extensive battery of exams, at both the federal and state levels, and are obligated to complete ongoing continuing education requirements to maintain their proficiency. Instead of asking patients to study pharmacology, we merely ask patients to consult their physician – and we should do the same in the financial services industry. Investors should be encouraged to talk to an advisor, so they can rely on that professional's demonstrated knowledge, skills and experience to guide them.

Again, I thank FINRA for its efforts to serve investors, and I appreciate this opportunity to provide you with my comments.

I am more than happy to discuss with you and your colleagues. Please contact me at 703-217-7850 or ric@thetayf.com.

Yours,

Ric Edelman
Founder
Digital Assets Council of Financial Professionals
and The Truth About Your Future LLC