BDA Bond Dealers of America

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

RE: FINRA Requests Comment on Potential Enhancements to Certain Engagement Programs

Dear Ms. Mitchell:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the Financial Industry Regulatory Authority (FINRA) Special Notice ("the Notice"), requesting comment on potential enhancements to certain FINRA engagement programs. BDA is the only DC based trade association representing middle-market securities dealers and banks focused on the U.S. fixed income markets. BDA welcomes the opportunity to comment on this Notice.

BDA believes regulation is the most significant factor driving broker-dealer industry consolidation and that small-to-medium sized broker-dealers are the hardest hit by each additional regulatory burden.

The U.S. broker dealer industry is currently being shaped by two connected trends: increased regulation and broker-dealer consolidation. As FINRA knows, small-to-medium sized broker dealers feel the impact of increased regulatory burdens more acutely, from an economic and business-impact standpoint, than larger firms that have more resources and employees. Smaller dealers need to focus on the day-to-day demands of profitably running a broker-dealer in a highly competitive and challenging business environment and may not have the compliance and technology resources necessary to remain active participants in certain fixed income markets as regulatory burdens continue to increase. Therefore, BDA welcomes this opportunity to continue to engage with FINRA to critically analyze the process by which the self-regulatory organization responsible for overseeing the U.S. broker-dealer industry, formulates policy and communicates with its members in its mission to protect investors and the integrity of the markets.

BDA believes FINRA can improve committee transparency to make committee feedback on regulation, compliance, and enforcement more transparent without curtailing productive committee dialogue or confidentiality.

BDA believes committee transparency can be improved. From a practical perspective, most of FINRA's committees and committee members are not listed on FINRA's website. So, it can be hard to identify who the members of the committee are. While BDA recognizes that candid and open discussions are essential to running a valuable committee, BDA believes that committee transparency can be meaningfully increased without harming committee functioning. For example, FINRA notes in the Notice that many committees provide input to FINRA's Board in response to requests for comment, examination and enforcement, and compliance issues. It would be useful to create some publicly available content so that members know what the committee is focusing on and what the committee generally communicated to the FINRA Board on a regulatory issue, for example. BDA thinks this type of general, high-level summary information could be provided without attribution to committee members and without harming committee discussions and this would add value to FINRA's committees. For example, BDA members would have been especially interested in a paragraph that summarized the feedback of the Fixed Income Committee and the Small Firm Advisory Board regarding the Retail Confirmation Disclosure Rule.

In summary, BDA appreciates FINRA's committees and believes that with focused and targeted efforts to provide some insight into committee views, the value of committees could increase. BDA thinks this could be done without harming dialogue or communications with FINRA's Board.

An additional area where committee structure could be improved is with the Compliance Advisory Committee, which could be expanded to include medium and small firm members.

BDA urges FINRA to strengthen and formalize its retrospective rule review process.

BDA would welcome an improved process for FINRA to assess its rulemakings retrospectively. A much-needed area of improvement for rules generally is cost-benefit analysis. Given the rate of industry consolidation, FINRA should be very sensitive to how the costs of rules are impacting firms and competition, especially for small-to-medium-sized firms. The review process would be strengthened by a more rigorous cost benefit analysis during the rule proposal phase and then a retrospective review after a set number of years (perhaps 2 years after a new rule's effective date) that assesses if the economic assumptions that supported the initial cost benefit analysis were reasonably accurate. If the economic costs and impact on competition exceed the expected case,

FINRA should again consider regulatory alternatives because the assumptive case was not sufficiently accurate. An additional analytical step FINRA could take in the rulemaking process is the performance of consistent outreach to the vendor that will create commercial solutions for compliance—prior to the rule being approved. Given the scope of recent rulemaking, vendor solutions for many rules is a practical requirement and a significant cost for dealers that should be assessed as part of FINRA's cost benefit analysis.

BDA believes FINRA should incorporate into its regulatory reviews a required review of cost-benefit analysis. To enhance feedback, FINRA could publish a request for comment two years after the original effective date of a given rule that sought comments, within a specified time period, about how the rule was impacting the marketplace and what the actualized costs of compliance are.

One particularly frustrating aspect of the comment period for the recent FINRA 4210 mortgage security amendments was the comment-letter dialogue with FINRA around costs of compliance. BDA presented multiple, quoted, real vendor costs for margin tracking and management technology and also estimated personnel costs to run the margin tracking, which BDA members do not currently have because most regional dealers do not trade un-cleared swaps. FINRA's response addressed the cost estimates by providing one unreasonably low vendor cost estimate. This type of interaction on cost-benefit analysis degrades the comment process.

BDA urges FINRA to work with the SEC to improve the enforcement process, especially related to Wells notices and settlements with dealers and dealer personnel.

While complying with a request for information in relation to an exam inquiry, broker-dealers provide documentation in response to FINRA and/or SEC inquiries without knowing the full scope of the inquiry or the specific focus of the inquiry. As a result of the inquiries and subsequent dealer responses, regulators may choose to pursue an enforcement action. If the enforcement process moves forward, broker-dealers are confronted with a choice prior to receiving a Wells notice—to settle or proceed with arbitration. The dealer is forced to make the choice to settle without knowing the full set of facts the regulators are considering. This leaves the broker-dealer firm in the precarious position of having to make a significant legal decision, for the firm and for the firm's employees, without being granted an opportunity to fully defend the firm and the firm's employees.

If a broker-dealer does not settle, the firm and firm employees may be sent a Wells notice by the SEC notifying the firm that the SEC intends to bring an enforcement action. If the Wells notice does not result in an enforcement action, that Wells notice remains on

the Form U-4 of each firm employee that received the notice. And while the firm itself would not have this negative mark on their record permanently, the employee would. This unfairly impairs the firm employee's ability to compete on deals due to the stigma of having a negative report on their Form U-4 even though the employee never committed wrongdoing.

BDA urges FINRA to assess shortcomings in due process of the examination program's procedures and timing of sending the Wells notice to ensure securities professionals are not harmed when they have not committed any violations.

BDA members have experienced FINRA examiners examining firms for compliance with rules that are not finalized and not part of FINRA's Rulebook.

BDA firms urge FINRA leadership to work to ensure exam staff are aware that proposed rules are not part of the FINRA Rulebook. Multiple BDA firms noted that months prior to the adoption of the recent amendments to the FINRA 4210 for mortgage securities, exam staff was treating the rule as if it was adopted and effective, which it is not. This is disruptive and causes unnecessary friction between dealers and exam staff because dealers do not have to comply with proposed rules, but want to support a productive and cordial working relationship with the examiner.

BDA members believe examination staff should be more faithful to the reasonableness standard that is applicable to FINRA rules.

BDA firms often relate situations where exam staff communicate that a firm's policies and procedures are not sufficient even though the policies and procedures satisfy the requirements of the rule in question. BDA firms, especially small-to-medium sized firms, believe FINRA needs to impress upon exam staff the importance of the reasonableness standard so that FINRA exam staff allows broker-dealers of different sizes and business models to have policies and procedures that are reasonable for their businesses and in full compliance with the text of FINRA rules, rather than allowing FINRA examiners to set an industry standard.

BDA urges FINRA to allow individuals to sign up for more frequent regulatory updates than the weekly update.

The FINRA weekly regulatory email is an informative and valuable email. However, BDA urges FINRA to allow individuals to opt-in to email updates for new requests for comments, interpretive guidance, FINRA press releases, alerts for filings with the SEC, and other significant actions that broker-dealer and legal personnel need to be aware of immediately.

From a practical standpoint, in order to find out about a change to a FINRA rule filing, including a notice that the rule was filed with the SEC or that FINRA has commented to the SEC on a FINRA rule filing, or amended the filing, the interested person would need to check the specific page dedicated to rule filing on the FINRA website. With the typical, initial 21-day comment period for an SEC filing, this means if the employee does not check on filings daily by going and searching the FINRA or SEC websites, they may not know important information until the next weekly email. That is a significant amount of time for a 21-day comment period.

Thank you for the opportunity to comment on this Notice. BDA looks forward to continuing to work with FINRA to ensure that the viewpoints of regional securities dealers are communicated directly to FINRA.

Sincerely,

Mike Nicholas
Chief Executive Officer