



June 19, 2017

By Electronic Mail (pubcom@finra.org)

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Special Notice – Engagement Initiative: FINRA Requests Comment on Potential Enhancements to Certain Engagement Programs

Dear Ms. Mitchell:

Commonwealth Financial Network[®] (“Commonwealth”) welcomes and appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Request for Comment on Potential Enhancements to Certain Engagement Programs as discussed in its Special Notice (the “Notice”). Commonwealth is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,700 producing registered representatives (“RRs”) who are independent contractors conducting business in all 50 states.

Commonwealth agrees that active and constructive engagement between member firms and FINRA is a vital component of effective and transparent self-regulation. We commend FINRA on taking public, proactive steps to engage the membership in this manner as part of the FINRA360 initiative.

As discussed in the Notice, FINRA already offers a wide variety of means by which member firms may directly engage with FINRA senior leadership. These opportunities include active participation on one or more of FINRA’s various committees, attendance at regional, annual or topical FINRA conferences, Compliance Outreach Programs and district events, or simply by picking up the phone, or arranging video conference or in-person ad hoc meetings with senior FINRA staff. In short, for those firms that choose to take the opportunity to do so, it has been my experience that FINRA staff are available for active engagement at all levels of the organization.

Having said that, there have also been examples in which it appeared that certain FINRA staff were merely going through the motions to give the impression of active engagement when a decision to take a particular course of action had already been made. In essence, staff may have been *hearing* what was being said but they were not really *listening*. In the spirit of fair and effective self-regulation and open and honest engagement, FINRA should foster and promote a culture within its organization that encourages staff at all levels to keep an open mind to alternative points of view and genuinely *listen* to the concerns raised by its members.

Request for Comment on Engagement in Advisory, Ad Hoc and District Committees

As a past member of FINRA's Continuing Education Content Development Committee, a past and current member of both the District and Regulatory Advisory Committee (RAC), and a current member of the Membership Committee, I understand and appreciate the important roles each of these committees individually play in the overall engagement and self-regulatory process at FINRA. While there exists some overlap in some of the topics discussed during the District, RAC and Membership committees, I have found that the diversity of background, expertise, level of seniority, business models, firm size and tenure of the participants representing member firms on these committees is vastly different. As a result, even when there is occasional overlap in the topics of discussion, the diverse background of the members offers an important, valuable, dynamic and unique perspective to the each of the discussions.

The availability of and access to senior FINRA staff during the District and Membership Committee meetings is of paramount importance to me as an industry participant. The District and Membership committee meetings should continue to occur in person. At the district level, the opportunity to engage on both a personal and professional level directly with the district and regional directors is invaluable to me as a CCO. Likewise, the availability of and direct access to the most senior staff at FINRA, while also having the opportunity to develop and foster strong relationships and engage in frank, open and honest discussions and feedback with both senior FINRA staff and senior industry participants during Membership Committee meetings, is of vital importance to maintaining a constructive level of engagement.

The District Committees serve a fundamental and valuable role within the overall FINRA engagement process. District Committees provide a crucial bridge between firms and their local senior FINRA district leadership. The personal contact and access afforded firms directly to FINRA district leadership allow firms to demonstrate the strength of their compliance culture and business operations to, and to learn about the respective district experiences, concerns and timely exam hot topics from, their primary regulator. District Committee members get to know their respective district and regional directors; and district and regional directors get to know and have the opportunity to improve their familiarity of the people behind the firms that are operating in their respective districts. As a result, the District Committee offers a unique opportunity for meaningful and personal engagement between district committee members and senior FINRA district staff.

With respect to term limits for district committee members, three years is perfect. Anything shorter would diminish the value and consistency of engagement, and anything longer could stress the capacity of participants to remain engaged in light of their other business obligations. The process of having one third of member firm participants roll off every year effectively allows industry and FINRA participants to get to know and network with each other, but keeps it fresh at the same time. Further, given the election process that exists for the appointment of each district committee member, there seems to be no reason to limit the total number of terms that a district committee member may serve when he or she is willing and able to serve and duly elected to the committee by members within their district.

The RAC evolved from the idea that more industry input is better when FINRA is considering new regulatory initiatives and rule proposals. The members of the RAC receive, review and comment on major FINRA initiatives and rule proposals before they are submitted to the FINRA Board for consideration. This process allows members of the RAC to ask questions, clarify content, voice concerns and provide constructive feedback or support directly to the FINRA staff who is responsible for the proposal. RAC comments are presented to the Board along with each proposal in order to help the Board make an informed decision in light of the comments received from the membership. This comment process is vital to the success of the overall engagement process.

The strength of the Membership Committee lies in the diversity of business models and background of each of the industry participants. The seniority of each of the committee members within their respective firms, as well as that of participating FINRA staff, and the cohesiveness, comradery and mutual trust that has developed among the industry and FINRA participants over many years of working together, has been critical to the ongoing value and success of the Membership Committee.

A few thoughts on the makeup of the Membership Committee:

- In no event should FINRA add non-industry participants to the Membership Committee. Doing so would undermine the purpose and effectiveness of the committee and would be extremely disruptive to its mission and purpose.
- The selection process for committee membership should remain at the discretion of senior FINRA Member Relations staff, as it is today. FINRA staff are in the best position to evaluate the strengths and relevant backgrounds necessary or desirable to make the Membership Committee most effective. There are plenty of opportunities to have elected members on other committees where it makes more sense given the context and purpose of the respective committees (e.g. District Committee, SFAB).
- Likewise, decisions relative to length of term of service of each committee member should remain at the discretion of FINRA Member Relations staff who are in the best position to make such decisions.
- FINRA should consider making public the rosters of the advisory committee members. Doing so would help improve transparency and provide the means for other interested parties to contact committee members about relevant topics that may be appropriate to raise during committee meetings, to ask questions, or provide general feedback. Publishing the names of ad hoc committee members may or may not be useful depending upon the purpose, scope and term of the respective ad hoc committee. The decision of whether or not to publish the names of ad hoc committee members should remain at the discretion of FINRA.

I have had the privilege of witnessing first-hand the positive impact that committee participation and constructive feedback has had on the review of a certain matter or rule, and when it has prompted FINRA to pursue a different direction. However, the tangible impact that FINRA committees often have on relevant issues, and the times that specific feedback was instrumental in effecting change, are often not known to those member firms that do not participate on these

committees. This is a lost opportunity for FINRA. FINRA should take advantage of these situations by publicizing specific examples when committee engagement and industry input led to meaningful change with respect to a particular initiative or rule proposal.

Request for Comment on Engagement in FINRA's Rulemaking Process

Would it be helpful for FINRA to subsequently post a link on the Regulatory Notice's request for comment web page to the FINRA rule filing(s) containing the responses to those comments?

Yes. The addition of a link to the Regulatory Notice comment page containing FINRA's responses to the comments it receives, as well as to the Regulatory Notice announcing SEC approval, would improve the dissemination of information regarding the rationale behind FINRA's decisions of whether or not to incorporate feedback it received during the comment process. In addition, FINRA should consider including these links in the FINRA Corporate Notification Weekly Updates it distributes via email.

Although the period for commenting on proposed rules published by the SEC is controlled by the SEC, FINRA can change the comment period applicable to its Regulatory Notices, which is typically 45 days. Is this a sufficient period of time to allow for comment? Should FINRA provide for a shorter or longer time period for comment on its Regulatory Notices?

In many cases, a period of 45 days to provide thoughtful, informed comments in response to FINRA Regulatory Notices has proved insufficient. FINRA should extend the comment period to a minimum of 60 days. In cases where FINRA receives significant feedback from committee members on certain rule proposals prior to publishing such rules for public comment, FINRA should provide a comment period of at least 90 days. Additionally, FINRA should consistently include questions specific to the feedback it receives from committee members in its requests for comments. Doing so will help prompt comments regarding those specific points of interest from other members who may not have considered that particular issue, and would better inform FINRA about the concerns or scope of impact on firms of a particular proposal that should warrant further consideration.

What additional steps could FINRA take to encourage meaningful input on proposed rules by advisory committee members? If you have served on one of the advisory committees that reviews proposed rules, what has been your experience on the committee? Were there measures that would have enhanced your ability to provide input to FINRA on proposed rules?

FINRA should listen to and try to empathize more with its members, and it should take additional time to consider the member's perspective relative to the practicality of a firm's ability to reasonably implement policies that would be necessary to comply with any proposed rule. FINRA must also do a better job assessing the actual, tangible benefit reasonably expected to be derived if a new rule was implemented vs. the burdens, complexities and adverse economic impact that would be imposed upon firms in their reasonable attempts to comply.

FINRA has demonstrated a tendency to have an automatic reaction to impose a new rule when rules already exist on the books that, if enforced or clarified, should be sufficient. There have been times when it appears that FINRA has already made up its mind about a particular issue and that staff are just going through the motions required of them during the comment process. If FINRA receives widespread concern about the impact or adverse consequences of a rule vs. the perceived benefit, FINRA should take more time to reassess and consider alternatives. FINRA should invite those with passionate views about a particular topic to have an opportunity to explain themselves and have an in depth dialogue with relevant FINRA staff, either individually or collectively. FINRA needs to put itself in the position, and make best efforts to appreciate the perspective, of firms that have the responsibility to implement policies and procedures reasonably designed to comply with the requirements of a new rule. In the end, FINRA may very well move forward as it originally intended even when there are widespread concerns raised about the implications of a specific proposal. In such cases, FINRA must be very clear in its responses to public comments explaining exactly why it chose not to incorporate the comments FINRA received during the comment process.

Request for Comment on Engagement in Retrospective Rule Reviews

Is the process by which FINRA engages in the retrospective review of its rules effective and transparent? Should FINRA make any changes to this process to facilitate greater public input and feedback? Should FINRA consider streamlining or expanding this process in any way?

The goals and purpose of the retrospective reviews are sound, but the process takes too long. FINRA should take steps to improve the transparency of the process relative to its selection of those rules that it subjects to the retrospective review process. FINRA should improve the means and scope of its protocols for requesting input from members relative to rules that may be better suited to the retrospective review process.

If you have participated in responding to a survey as part of the retrospective review process, what was your experience with the survey, including the content of the survey and time allowed to respond? Are there ways in which FINRA could improve how it surveys the public and members as part of its retrospective rule review process? If you were consulted by FINRA staff in connection with the retrospective review on one of FINRA's rule sets, what was your experience with the process?

The survey process was effective and included the opportunity to participate in a phone call with informed FINRA staff to discuss and review the rule and to provide feedback, as well as participate during the formal comment process. I have found that FINRA staff were well prepared to lead the discussions and had a list of questions designed to garner meaningful input.

Request for Comment on Engagement in Regulatory Guidance

Should FINRA seek to provide more interpretive guidance regarding its rules, and, if so, what form should that take? Under what circumstances should FINRA consider obtaining comment or

feedback on proposed guidance? Should FINRA consider any changes to the process or mechanisms through which it provides guidance? Should FINRA make greater use of FAQs?

Yes, FINRA should seek to provide more interpretive guidance regarding its rules. FINRA's periodic use of FAQs are an effective means by which FINRA has provided guidance on the interpretation and application of its rules. FINRA should expand its use and frequency of FAQs as it receives repeated requests for clarification or guidance from its members on specific rules or as it notices common deficiencies among firms during exams. In addition, to help ensure that the guidance provided by FINRA about its rules is effectively designed to answer the relevant questions members have about specific FINRA rules, FINRA should routinely seek input directly from appropriate FINRA committees prior to publishing FAQs. This will improve the chances that the FAQs are clear, unambiguous and on point, and will substantially improve the value and usefulness of the FAQs for members.

What has been your experience in obtaining interpretive guidance from FINRA? Do you believe you are able to obtain guidance from FINRA when you need it? Do you believe you have the same access to guidance from FINRA as other firms?

As a general matter, I have found that I am able to obtain guidance from FINRA when I need it. The guidance I receive is typically obtained through verbal discussions with trusted FINRA staff. While this is helpful and provides some reasonable level of comfort that our firm is on the right track or doing the right thing, it does not constitute "official" FINRA guidance and is not supported beyond my internal notes of a conversation. I have yet to experience a problem with this method of obtaining guidance, but there have been examples over the years where different FINRA staff have expressed different interpretations of the same rules, and that is concerning. These differences most often come to light during discussions with industry peers, who are usually in different districts and who have received contrary guidance or examination findings from other FINRA staff about the same topic.

Request for Comment on Engagement Through Member Relations, Education and Compliance Resources

FINRA's online learning (e.g. webinars, podcasts), website communications to firms (e.g. A Few Minutes With FINRA, Board of Governors Meeting Updates), conferences and meetings (e.g. FINRA Annual Conference, District Compliance Events, Compliance Outreach Programs, Compliance Boot Camps), and other published guidance (e.g. Annual Examination Priorities Letters, Frequently Asked Questions) are very helpful and should be continued. Different people absorb or prefer to digest information in different ways, and FINRA provides a wide variety of means by which firms may obtain relevant educational and compliance resources through Member Relations designed to meet their needs.

The information provided via the FINRA Report Center has improved substantially. In particular, the Risk Monitoring reports (e.g. Registered Representative Composition Report, Sales Practice

Complaint Report), Disclosure reports (e.g. Web CRD Late Filing Report, 4530 Disclosure Timeliness Report Card) and Trace Reports provide useful information that helps firms identify potential opportunities for improvement, inquiry and firm benchmarking.

FINRA has posted various online Report Center tutorials on its website. While that information is helpful, unless someone is specifically searching for the tutorials, or clicks on the “How do I interpret this table” link and then the “Click here to access the tutorial” link, they are not likely to be aware that the tutorials exist. FINRA may wish to consider providing information or links to the Report Center tutorials prominently on the Report Center itself, either on the main page or separately but more prominently on each individual report page. Providing direct, prominent access to the tutorials in this manner may improve usage as well as the value derived from each report.

For example, with respect to the Registered Representative Composition Report, I have had several discussions with peers who are unaware of the ability to obtain detailed information identifying every registered representative with the firm that falls into any of the categories listed in the report, simply by clicking the “Details” tab at the top of the report. While most everyone is familiar with the ability to export the report itself via the Excel button, the Details button on the Registered Representative Composition Report provides extremely valuable information to firms that is not contained in the report itself.

Request for Comment on Transparency Regarding Board Activities

Are the pre and post-Board meeting notifications and Board video updates informative and useful? What additional or different information would be helpful?

I have found the pre- and post-Board meeting notifications and video updates to be informative and useful. The post-Board meeting videos in particular are appreciated because they provide timely, first-hand insight into the main topics that were discussed, the intent or purpose of proposals that were approved by the board, and the reasons certain relevant actions were taken. Hearing directly from Robert Cook and Jack Brennan about these matters by video provides reasonable and appropriate transparency and context to the topics raised at the Board meetings.

The pre-Board meeting notification is posted on FINRA’s website, and the post-Board meeting notification is posted on the website and emailed to each firm’s executive representative. Should FINRA email the pre-Board meeting notification to firms? How else might FINRA broaden dissemination of its pre- and post-Board meeting notifications? Should FINRA allow any interested individual to sign up for the pre and post-Board meeting notifications?

In addition to their posting on FINRA’s website, notifications of the pre- and post-Board meetings are distributed by FINRA in the FINRA Corporate Notification Weekly Updates emails. To my knowledge, any person may subscribe to the Email Update subscription list on the “For Industry Professionals” section of the FINRA website. The Weekly Updates emails provided by FINRA include a wide array of information covering many topics that are timely and useful. FINRA may

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wish to consider whether the ability to subscribe to the Weekly Updates could be better communicated to interested persons via the main page or other locations on its website.

Yes, FINRA should allow any interested persons to sign up for both the pre- and post-Board meeting notifications.

Request for Comment on Transparency Regarding Examination and Enforcement Programs

Are there changes to the Annual Priorities Letter in terms of substance or the timing of its issuance that would be useful? In addition to the letter and podcast, are there other ways in which FINRA should consider communicating the substance of the Annual Priorities Letter to members?

The substance of the Annual Priorities Letter and the timeliness of their release has vastly improved over the years. Including more specifics or background on each of the issues raised in the letters, and describing FINRA's expectations with respect to each item included in the letter, would be extremely beneficial to firms.

To what extent do you find the Annual Priorities Letter helpful in reviewing your compliance and supervisory programs and framing issues to address in your internal training and communications?

We have found the Annual Priorities Letter to be extremely helpful. Like many firms, we review the letter each year as soon as it comes out as a means to understand the issues that FINRA is seeing and to take appropriate remedial action as appropriate. We also routinely take the opportunity to assess our written supervisory procedures and firm policies with respect to the items listed, and we consider opportunities to enhance our manuals and firm element continuing education, as applicable. Further, the Annual Priorities Letter is a useful resource that we provide to other business units, as appropriate. This provides an additional means by which we communicate FINRA's perspective on various business issues that may be relevant to a particular area directly from the source.

Is there additional data FINRA should consider providing in connection with its examination and enforcement programs to provide additional transparency into these programs?

When particular issues or systemic areas of concern develop or become apparent as FINRA examines firms throughout the year, FINRA should promptly make the details of those issues known to all members via a Regulatory Notice so that firms may take preemptive remedial action when and as necessary. There have been many examples where we have first learned of a particular issue or concern for FINRA upon receipt of a sweep letter or upon reading a FINRA enforcement action press release. "Rulemaking by enforcement", enforcement designed to send a message to the industry, or enforcement as a means of providing general industry guidance, is not an effective means of engagement. This approach to regulation leads firms to conclude that FINRA is more interested in getting headlines and fines from firms than it is in promptly addressing the underlying concerns that gave rise to an enforcement action.

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The vast majority of firms strive to do the right thing. FINRA's employment of a 20/20 hindsight approach to regulation and enforcement is a standard that no firm can withstand, including FINRA itself. Many of the cases that have led to a "failure to supervise" or "failure to adopt and implement reasonable supervisory procedures" against firms resulted from FINRA's ability to apply 20/20 hindsight with "new" facts, without due consideration to the reasonableness of the firm's procedures that were created based on information that was reasonably available to the firm at the time.

Do you find the disciplinary and decision information, and the frequency of that information, posted on FINRA.org helpful? Is there additional or other information that you would find helpful?

An improved index or search functionality that provides firms the ability to find enforcement action by specific topics or industry trends would be extremely useful.

Request for Comment Regarding Transparency of Financial Reporting

To the extent that FINRA does not already disclose the amount of fines assessed to members that do not involve restitution to customers and how those funds are used, it should do so. There is a wide perception that FINRA uses the proceeds of fines against members to pay FINRA employee bonuses and to support other internal FINRA initiatives. FINRA should provide full transparency as to how the proceeds from fines against members are used for the benefit of the industry and investors alike.

Thank you for the opportunity to provide comment on potential enhancements to FINRA's engagement programs. If you have any questions or would like to further discuss these issues, please do not hesitate to contact me.

Respectfully,
COMMONWEALTH FINANCIAL NETWORK



Paul J. Tolley
Senior Vice President
Chief Compliance Officer