



June 19<sup>th</sup>, 2017

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

**Re: FINRA Special Notice – Engagement Initiative**

Dear Ms. Mitchell:

The Equity Dealers of America (EDA) appreciates the opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) notice regarding potential enhancements to certain engagement programs (Engagement Notice).

The EDA represents the retail and institutional equity capital markets interests of middle market financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The EDA's mission is to promote efficient and competitively balanced equity capital markets that advance financial independence, stimulate job creation, and increase prosperity. The EDA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

The EDA strongly supports FINRA undertaking a comprehensive review of the financial securities regulatory structure. The Engagement Notice along with the FINRA360 review of its policies and procedures is very encouraging and we welcome it.

FINRA, as a Self-regulatory organization (SRO), has an important responsibility in overseeing our securities markets. SROs can and should be a cost-effective mechanism for regulation that is not borne by the taxpayer. Since the financial crisis, FINRA has sought to expand its responsibility in overseeing the securities markets. This has created duplication with the U.S. Securities and Exchange Commission (SEC), multiple layers of rulemaking, and FINRA enforcement decrees that have introduced confusion into the operations of broker-dealers.

We believe that it is critical for FINRA to engage the public and its membership to develop a framework to that is transparent, that adheres to principles of good governance, that does not duplicate SEC functions, and that serves to benefit the financial markets.

We look forward to working with FINRA on its FINRA360 initiative and we have set forth some recommendations related to some of the issues raised in the Engagement Notice below.

### **General Recommendations**

The EDA believes that regulatory entities should operate with open and transparent rulemaking processes to make certain that the views of the public, and in the case of SROs its membership, are considered.

The EDA strongly believes that FINRA should only adopt new rules if it is able to demonstrate, through a reasoned economic analysis, that the benefits of a rule outweigh its costs. While FINRA is not technically subject to the economic analysis requirements of Executive Orders 12866 and 13563, we believe that conducting a cost-benefit analysis prior to adopting a regulation is a fundamental principle that should guide the viability of any rulemaking. Accordingly, FINRA should voluntarily adopt and adhere to the processes and guidelines set forth in each Executive Order referenced above.

We also believe that FINRA should conduct its board meetings publicly and live stream them on its website. We believe that this type of transparency is necessary for the public to understand how the FINRA board makes its decisions.

Finally, the EDA believes that FINRA should strive to be transparent and conduct its regulatory functions in accordance with the principles of good governance. Consequently, we believe that FINRA should voluntarily subject itself to the requirements of the Administrative Procedure Act (APA).

### **Enforcement Program Recommendations**

The EDA strongly objects to “regulation by enforcement”. We believe that when regulators use their enforcement powers to engage in what amounts to a rulemaking that they usurp the due process of regulatees and side step the important processes set forth in the APA. FINRA should refrain from conducting rulemaking through its enforcement actions or through the examination process.

FINRA can avoid “rulemaking by enforcement” by setting forth any new policy or changes to existing policy using the public notification processes set forth in the APA (i.e. notice to members or rulemaking where appropriate). If FINRA believes that an issue, which results in an Advice, Waiver and Consent (AWC) with a firm has uncovered an industry practice that should be changed, then FINRA should issue a public Notice to Members that clearly articulates their regulatory expectations and cite the underlying rule that is the basis for their guidance. If there is no rule directly on point to address the concern, then FINRA should go through the public comment process.

AWC decrees are negotiated documents. The EDA believes that FINRA would cause substantially less confusion among its membership by not citing any facts that caused the execution of the AWC. We believe that the public and the markets would be better served if

FINRA publicly released AWCs that set forth only the following information: (1) the name of the firm, (2) the rule the firm violated, and (3) the amount of the fine. This would avoid any confusion about whether FINRA was making policy through the AWC process. If FINRA felt compelled to release guidance or a “frequently asked questions” notice in connection with the AWC, then we would support such an effort as it is transparent and it would conform to the processes set forth in the APA.

FINRA should annually disclose a description of any emerging trends that its examination team referred to the enforcement division over the preceding year along with a brief description of any novel legal theories or new standards used by its enforcement attorneys. We believe the public needs more transparency and certainty related to FINRA’s enforcement program.

The EDA believes that FINRA should adopt a public policy, through a notice to its membership, that regulatory sweeps will only be used to enforce existing regulations, and that they will not be used to introduce new obligations or requirements that FINRA members must comply with during the examination process.

When a firm must be assessed a fine, FINRA should adopt an Enforcement policy that considers the relative size of the member firm and the magnitude of the alleged violation at issue. FINRA should also publicly set forth a reasonable time for look-back periods that it will use when addressing industry-wide matters.

We appreciate FINRA’s willingness to engage the public on these important matters and look forward to working with FINRA to help make it a more effective and transparent regulator. We will provide additional comment as necessary, and stand ready to assist in any way that we can.

Sincerely,

Christopher A. Iacovella  
Chief Executive Officer