



June 19, 2017

*Submitted electronically*

Jennifer Piorko Mitchell  
Vice President and Deputy Corporate Secretary  
Office of Corporate Secretary  
FINRA  
1735 K Street NW  
Washington, DC 20006-1506

**Re: Special Notice – Engagement Initiative**

Dear Ms. Mitchell:

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA’s”) Special Notice (the “Notice”), which requests comment on how FINRA can enhance its current engagement programs to promote its mission and effectiveness as a Self-Regulatory Organization (“SRO”).<sup>2</sup> Fidelity generally agrees with many of the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) in its comment letter on the Proposal (“SIFMA Letter”). We submit this letter to supplement SIFMA’s comment letter with our own views on certain specific positions.

### **A. Executive Summary**

We applaud FINRA for undertaking its FINRA360 comprehensive self-evaluation including publishing the Notice soliciting comment on how it can enhance its engagement programs. Fidelity offers a unique perspective given our diverse business model and multiple member broker-dealers. Our comments include the following points:

- *Engagement Through Advisory, Ad Hoc and District Committees.* Fidelity highly values FINRA’s use of committees. FINRA should maintain anonymity and confidentiality of committee information where appropriate and should increase transparency only to a limited audience of committee members and all member firm Chief Compliance Officers. FINRA should distribute committee materials earlier and relax certain confidentiality restrictions to allow limited internal sharing of materials with subject matter experts. Advisory and ad hoc committees should require active participation from members but

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<sup>1</sup>Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and many other financial products and services. Fidelity submits this letter on behalf of our broker-dealers and FINRA members Fidelity Brokerage Services LLC, Fidelity Distributors Corporation, Fidelity Investments Institutional Services Company, Inc., and National Financial Services LLC.

<sup>2</sup>[Special Notice – Engagement Initiative](#) (March 21, 2017).

should not impose election requirements or term limits. FINRA should continue to invite additional participation from subject matter experts outside of the committee membership. FINRA should conduct a survey on the effectiveness of individual committees.

- Engagement in Connection With FINRA Rulemaking and Guidance. FINRA’s rulemaking process works reasonably well but FINRA should increase transparency on the status of pending rulemaking. FINRA should continue to perform retrospective rule reviews and prospective rule reviews related to emerging technology. FINRA should continue to analyze the costs and benefits of existing and potential rulemaking because the cost of regulation is high and industry profit margins are shrinking. FINRA should consider the cadence of rulemaking in the same topic area. FINRA should write its rules and guidance in plain English. FINRA’s formal guidance process works well but should be timely for new rulemaking. FINRA should improve “one-off” guidance processes and allow firms to submit questions anonymously with answers posted publicly. FINRA should not engage in regulation by enforcement or pursue “broken windows” policies and should appropriately coordinate with other regulators. FINRA should not engage in “regulation by technology specification.”
- Engagement Through Member Relations, Education and Compliance Resources. FINRA should have tiered levels of online education and training.
- Engagement Through Investor Education. FINRA should focus its proprietary investor education on regulatory issues rather than general financial education. FINRA should partner with member firms and other industry vendors to deliver top quality financial education.
- Engagement Through Reporting on FINRA Operations. FINRA exam priorities letters are useful and we support more reporting on exam findings on an anonymized basis. FINRA reporting on enforcement actions should improve and FINRA should create a stronger database for more useful searching and reporting on enforcement cases.
- Additional Comments. FINRA should strive to harmonize rulebooks with other regulators and also coordinate with respect to examination and enforcement programs.

## **B. Engagement Through Advisory, *Ad Hoc* and District Committees**

### **1. Fidelity highly values FINRA’s use of committees**

Fidelity strongly supports FINRA’s use of committees to provide feedback on rule proposals, regulatory initiatives and industry issues. We believe most FINRA committees serve a useful purpose and the current structure and process work well. FINRA has fair and diverse representation on its committees from firms of varied sizes and business models and FINRA operations work well in supporting the committee process.

Fidelity representatives have had the opportunity to serve on various FINRA committees including Advisory, Membership, E-brokerage, Fixed Income, Public Communications and District committees as well as various special task forces. We have made meaningful contributions through committee engagement that have benefited the industry including our customers and other member firms. Subject matter experts from Fidelity and other firms who serve on advisory and specialized committees are often able to identify nuanced complexities, practical shortcomings, unintended consequences and opportunities for improvement in rule proposals or initiatives that may not be initially contemplated by FINRA staff. We appreciate the opportunities for early stage reviews of concepts and proposals, prior to the formal rulemaking process, and are grateful for FINRA's willingness to listen and change direction when appropriate based upon committee feedback. We also highly value the direct and candid dialogue with FINRA staff and management that takes place through committee meetings.

## **2. FINRA should maintain anonymity and confidentiality of committee information where appropriate**

We acknowledge the view expressed by SIFMA that there is a general lack of transparency with respect to certain aspects of the committee processes including committee selection, rosters, agendas, materials and minutes. However, in certain circumstances, there are important benefits to anonymity and confidentiality that outweigh the values of transparency. We urge FINRA to carefully consider moving toward a stronger bias of transparency as appropriate.

### **a. Anonymity promotes open discussion**

An expectation of anonymity in committee participation allows for freer conversations and more honest and forthright discussions. Direct public transparency into participating firms and individuals may have a chilling effect on members providing candid feedback and could subject members to unsolicited influencing efforts or time consuming inquiries from outside parties including various trade associations or special interest groups. This could make serving on committees a less desirable experience and could dilute the quality of committee membership and participation.

### **b. Sensitive topics should remain confidential**

Confidentiality of meeting materials and minutes is appropriate for at least some committees because they address sensitive topics and specific cases. In such circumstances, there should continue to be a presumption of confidentiality and information should remain protected by limiting distribution, redacting of sensitive information, etc.

### **c. Materials are intended to be informal**

The materials prepared for many committee meetings are less formal than those made public by FINRA in announcements, regulatory notices, rule filings or other reports. Many of the materials reviewed by committees are informal agendas, tables of information, draft proposals or conceptual memos that may be further developed in advance of being presented to FINRA's board of governors. Increased transparency and broader public review could subject the materials

to premature and unfair scrutiny, criticism and may cause confusion or misunderstanding by a reader who is not a committee member. This may discourage or delay FINRA staff from making materials available under tight timeframes.

### **3. FINRA should increase transparency of committee information, but only to committee members and *all* member firm Chief Compliance Officers**

An arrangement that strikes an appropriate balance between increasing transparency and preserving the benefits of anonymity and confidentiality would be to make more committee information available, except sensitive information, to *all* active committee members, irrespective of which committee they serve on, and *all* member firms' designated Chief Compliance Officers through a password protected web portal such as the "FINRA Events" site, Gateway or other similar platform (the "Committee Portal"). This would include access to downloadable PDFs and flexible reporting on FINRA committees including the selection process, mission or mandate, committee rosters, prior and current agendas, materials and generic meeting minutes without statements being directly attributed to any particular firm or individual.

Agendas, materials, and minutes for certain committees could be made available to individuals who do not serve directly on that committee only after the meeting in order to avoid unsolicited influencing efforts. FINRA could also provide tiered access to information that would include certain publicly available content such as an overview of the committees and their mission statements as well as contact information for FINRA staff members for firms to reach out to if they have inquiries. In addition, FINRA could use the Committee Portal to announce meetings and solicit potential topics to be covered via a web submission form.

Under our proposal, all FINRA member firms would have senior-level access to the information including many small and mid-sized firms with which Fidelity has clearing or other intermediary business relationships. These firms are fairly represented on committees by similar firms today but may not currently have direct committee membership or access to information. Providing increased visibility on committee matters to senior compliance personnel will present more opportunities for cross-firm coordination or discussion without the potential adverse consequences of widely distributing or proactively making committee information publicly available.

This proposed Committee Portal, with access to committee information and reporting functions, would also allow larger firms like Fidelity, with multiple affiliated member firms, to manage our lists of committee members, meetings, agendas and materials in order to coordinate internally on preparation and coverage.

### **4. FINRA should distribute committee materials earlier and relax certain confidentiality restrictions on sharing materials**

FINRA should distribute materials well in advance of committee meetings whenever possible (e.g., one to two weeks before rather than two or three business days) and reduce restrictions on limited sharing of certain materials with non-committee members. In practice, this will allow committee members adequate time and opportunity to consider the issues with internal

colleagues who are subject matter experts and to therefore provide more meaningful feedback. We have underlined a suggested edit to a standard committee material legend that would maintain a degree of confidentiality but would also allow for a more realistic and reasonable review.

This kit contains confidential information that is being provided to FINRA's [Committee] to assist them in the discharge of their responsibilities to the Corporation. The information should only be discussed with other members of the Committee, FINRA staff members, other FINRA members or affiliates of FINRA members and such other specific persons as may be authorized by the Committee. There should be no other disclosure of the information or discussion relating to the issues contained herein except to the extent that Committee members are advised that there has been general dissemination of that information by the Corporation to the public.

Alternatively, FINRA could provide summary material that committee members could share more broadly if there is concern about more detailed content being made widely available.

#### **5. Advisory and ad hoc committees should require active participation from members but should not impose election requirements or term limits**

FINRA staff should require active participation by committee members, should encourage face-to-face dialogue, either in-person or remotely through video conference, but should allow participation by teleconference if necessary. We believe FINRA should continue to exercise discretion in appointing individuals to these committees based upon required perspectives, expertise and fair representation. We do not believe that elections or term limits are necessary for these committees provided there is active, constructive and productive participation from members.

#### **6. FINRA should invite additional participation from outside the committees**

FINRA staff should continue inviting further participation from individuals outside the committee rosters who may have relevant input or viewpoints on topics to be covered in committee meetings such as SEC staff, academics, advocates or members of FINRA's board of governors. This happens at times, is valued and should happen more often.

#### **7. FINRA should conduct a survey on the effectiveness of individual committees**

Given the breadth of the topics covered in the Notice, FINRA should consider requesting more specific feedback on the usefulness of each type of committee and each individual committee, for example through use of a targeted survey to committee members. The results could inform whether there may be opportunities for consolidation of the many existing committees and also new focus areas for existing committees.

One example would be in the technology space where there may be overlap in the focus of two committees. Specifically, in the Notice, FINRA indicates it has an Operations Advisory Committee focused on operational trends and impact on controls and regulation, global clearance, settlement, data standards and other back office issues. FINRA also indicates it has a

Technology Advisory Committee focused on technology issues that affect clearance, settlement, data standards, compliance monitoring, and security and disaster recovery.

The technology oriented committees or sub-committees should focus on more dynamic aspects of technology development impacting the securities industry such as in the areas of: cybersecurity; artificial intelligence; machine learning; data analytics; etc.

Technology oriented committees could also be more tactical and interactive with respect to analyzing trends in FINRA inquiries, exams and implementation of tech-centric rule changes. This is often done through trade association working groups but could also be done through use of FINRA committees or sub-committees.

### **C. Engagement in Connection With FINRA Rulemaking and Guidance**

#### **1. FINRA’s rulemaking process works reasonably well but seems to take longer than it should for certain proposals**

FINRA’s formal rulemaking process works reasonably well, including having multiple opportunities for comments on significant rulemaking proposals through: committee previews; concept releases; retrospective rule reviews; proposals made by Regulatory Notice; and formal rule filings submitted to the SEC. We support this thorough multi-stage process and believe it generally results in a fair vetting of new rules that in most cases results in workable rules with sufficient time for implementation. However, as noted in more detail below, certain rulemaking seems to take longer than firms may anticipate.

#### **2. FINRA should increase transparency on the status of pending rulemaking**

Certain rule filings and regulatory notices are published shortly after being approved by FINRA’s board of governors and some seem to be “fast tracked” for SEC approval within months.<sup>3</sup> Other proposals made either by rule filing or regulatory notice become delayed, lose momentum for approval, and seem to enter “black out period” of uncertainty, sometimes for years, perhaps due to comments received from the industry, reaction from SEC staff, a bottleneck of other pending proposals, or a shift in regulatory priorities due to market events or personnel changes, etc. For example FINRA’s Registration Restructure Proposal, currently awaiting SEC action, was initially proposed by Regulatory Notice in December, 2009. More recently, FINRA’s Retrospective Review of Gifts, Entertainment, and Non-cash Compensation was started in April, 2014 and resulted in a well-developed proposal by regulatory notice in August, 2016.<sup>4</sup> However, no formal rule filing has been made yet.

We believe the industry would benefit from more detailed status reports and updates on pending proposals and initiatives that would not only reflect what stage the proposal is in, but

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<sup>3</sup> FINRA filed [SR-FINRA-2016-027](#), its proposal to expand TRACE reporting of Treasury Securities on July 18, 2016, just days after FINRA’s board of governors authorized the rulemaking on July 14, 2016, and the new requirements were adopted on October 18, 2016.

<sup>4</sup> FINRA published a request for comment on proposed amendments to its rules on Gifts, Gratuities and Non-Cash Compensation Rules in [RN 16-29](#) on August 8, 2016.

would also include reasons or explanations for delays including high-level commentary on material concerns raised by the industry or SEC staff that are under consideration. FINRA could also publish a timeline for rule proposals and reviews that could be updated with comments, as needed. This increased visibility and accountability could present additional opportunities for industry comments and ideas to bring a pending matter to resolution and could help firms prioritize business and operational initiatives that may be impacted by expected rule changes.

### **3. FINRA should continue to perform retrospective rule reviews and prospective thematic rule reviews related to emerging technology**

#### **a. FINRA should continue to conduct retrospective rule reviews**

We commend FINRA's efforts to update or remove outdated or unnecessary rules and restrictions. Markets and market practices change over time and retrospective reviews of rules are just as important as proposing new rules. This effort started in 2014<sup>5</sup> and we agree it is important to look back at significant rule sets to determine whether they are meeting their intended objectives by efficient means. FINRA's commitment to perform retrospective rule reviews is well-aligned with the overall FINRA360 self-evaluation and improvement initiative.

Fidelity has been an active participant in retrospective rule reviews and we believe certain reviews thus far have resulted in significant favorable changes that benefit both firms and investors. One example in particular is FINRA's recent amendments to rules on communications with the public that enhance efficiencies by reducing filing requirements with no reduction in investor protection.<sup>6</sup>

#### **b. FINRA should continue to conduct thematic *prospective* rule reviews**

In addition to retrospectively reviewing particular rule sets, we also applaud FINRA for reviewing its rules more thematically to embrace innovative technologies that could have a transformative impact on the securities industry. FINRA should consider whether its rules are inhibiting innovation or experimentation and it has started to do this with its report and request for comment on Distributed Ledger Technology: Blockchain.<sup>7</sup> However, we believe the request for comment should come first and then FINRA should issue a report based on input from member firms. FINRA has also announced it is hosting a Blockchain Symposium as part of launching a broader Innovation Outreach Initiative.<sup>8</sup> We strongly support this type of forward-looking proactive engagement and we are happy to continue to contribute to those efforts.

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<sup>5</sup> FINRA launched its retrospective rule review effort with [RN 14-14](#) on Communications with the Public Rules and [RN 14-15](#) on Gifts, Gratuities and Non-cash compensation rules, both published on April 8, 2014.

<sup>6</sup> The SEC approved amendments to FINRA's Rules on Communications with the Public in [SR-FINRA-2016-018](#) on September 13, 2016 that eliminate many filing requirements.

<sup>7</sup> FINRA published a [report](#) on Distributed Ledger Technology: Implications of Blockchain for the Securities Industry in January 2017.

<sup>8</sup> FINRA issued a [news release](#) on June 13, 2017, announcing its Innovation Outreach Initiative including hosting a Blockchain Symposium.

c. FINRA should consult with members on prioritizing rule reviews

FINRA should solicit feedback from member firms through committees and general member surveys on what rules should be reviewed retrospectively and what forward-looking reviews should be conducted through the committee process, a separate request for comment and/or a nomination and voting survey or other process. The rule sets that have been retrospectively reviewed thus far seem to have been selected somewhat randomly and are presented with open-ended general question on effectiveness, but without much direction or commentary.

Areas we believe are ripe for retrospective review include, among others: Branch office and OSJ registration and inspection requirements, and use of mobile technology given the changing workforce, and increased use of remote office locations; WORM recordkeeping and electronic storage requirements; and E-delivery regulations.

FINRA should also continue to proactively reach out to member firms on emerging technology issues, including through its new Innovation Outreach Initiative and Fintech Industry Committee, for input before publishing detailed reports or guidance.

d. FINRA should retrospectively review other requirements

FINRA should also consult with members on retrospective reviews of other requirements that may be viewed as having lower value relative to effort such as INSITE reporting and the Risk Control Assessment survey.

e. FINRA should close out its rulebook consolidation

In addition to conducting retrospective and forward-looking reviews of current rule sets, FINRA should also address the few remaining NASD and NYSE Incorporated Rules to finally complete its rulebook consolidation process.<sup>9</sup>

**4. FINRA should continue to analyze the costs and benefits of existing and potential rulemaking because the cost of regulation is high and industry profit margins are shrinking**

a. FINRA should continue to perform cost-benefit analysis

We appreciate FINRA's commitment to analyzing the regulatory impact, including costs and benefits, of existing and potential rulemakings. We have concerns about the high cost of regulation in our industry where margins are shrinking due to steadily lower active and passive asset management fees and diminishing brokerage trade commissions. These developments greatly benefit investors but can constrain firms from continuing to innovate, educate, and improve services for customers. An environment of increasing regulatory costs and decreasing revenues and profits will adversely impact the number of firms in the marketplace and will lower

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<sup>9</sup> FINRA announced its rulebook consolidation process in an [Information Notice](#) on March 12, 2008.

the array of choices available to investors. Increased regulation of broker-dealers also leads to “regulatory arbitrage” and impacts business model decisions, as we have seen many broker-dealers decide to become RIAs.

b. FINRA should refine the accuracy of its cost-benefit analysis and engage with the industry at an early stage

We believe FINRA should continue to pursue and refine the accuracy of cost-benefit analysis and should engage with member firms and third parties including independent consultants early on in the rulemaking process. We recognize that there are significant challenges associated with receiving meaningful feedback from firms on cost estimates of implementation prior to final rule requirements being available. We also recognize that early engagement on potential rulemaking is not always a high priority for firms to undertake given more urgent matters that require attention.

Furthermore, we appreciate that it must be challenging for FINRA to weigh the benefits of a proposal when considerations include fundamental but less measurable concepts of investor protection and market integrity.

c. Less significant rule changes can still be expensive to implement

In better understanding the costs to firms, FINRA should be more aware that rulemaking it may view as less significant can nonetheless result in extensive evaluation and costly implementation efforts for the industry. This is especially true if the new requirements involve adding or changing electronic fields of information in firm systems, including customer facing online interfaces, back office recordkeeping, trade reporting or routing systems, and firm systems that exchange information with FINRA systems through automated data feeds. A recent example includes implementation of Rule 3210 addressing accounts of associate persons held at other brokerage firms.<sup>10</sup> When proposing Rule 3210, FINRA indicated:<sup>11</sup>

- it combines and streamlines longstanding provisions of the NASD and NYSE rules.
- that because the proposed rule change, as revised, is consistent with current requirements and longstanding practice, it will not impose additional burdens on members.
- that this proposed approach imposes less cost on members without reducing investor protections. In addition, the proposed rule change deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the proposed new rule or are otherwise addressed elsewhere by other FINRA rules, which further minimizes the potential compliance burden on members in light of the objectives of the proposed rule change.

FINRA did not consider this rule consolidation to be significant but it has nonetheless required substantial effort by securities firms in connection with making changes to many versions of online and hardcopy customer account applications, agreements and other forms;

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<sup>10</sup> Rule 3210 was approved on April 7, 2016 and an effective of April 3, 2017 was announced in [RN 16-22](#) on June 30, 2016.

<sup>11</sup> See rule filing [SR-FINRA-2015-029](#): Section (3) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change at page 4 of 174; and Section (4) Self-Regulatory Organization’s Statement on Burden on Competition at page 21 of 174.

modifications to data feeds and inter-firm communication practices; and changes to written policies and procedures. These efforts not only require substantial technology resources but also involve significant time investment by several stakeholder groups across a firm. Firms that provide clearing services, such as Fidelity, generally face an additional level of complexity and expense even for less significant rule changes in order to accommodate unique arrangements with its customers.

**d. FINRA should conduct retrospective reviews of its cost-benefit analysis criteria and efforts**

As noted, we greatly appreciate the challenges associated with estimating costs of proposed rules. FINRA may consider conducting a retrospective debrief on its criteria and methodology<sup>12</sup> used to perform cost-benefit analysis by soliciting feedback from member firms on the factors and framework used to arrive at an assessment for a rule proposal.

FINRA should also work with members to retrospectively review actual costs associated with a few representative rules of varying significance. This would include comparing actual costs against original commentary or estimates made to gain some appreciation of the expense associated with implementation efforts and effectiveness of the assessment criteria used. This could be done anonymously if firms are concerned with exposing competitive information.

**5. FINRA should consider the cadence of rulemaking in the same topic area**

When proposing or adopting new rules, FINRA should consider the pace of other rulemaking in that subject or topic by FINRA *and* other securities regulators. When there is a substantial volume of new rulemaking across regulators in a particular area, for example as there has been with respect to trade reporting, it can result in significant resource constraints placed on the same implementation personnel, including technologists involved in each parallel systems build, testing and implementation effort.

**6. FINRA should redact or protect detailed contact information of commenters**

On an administrative note, FINRA posts PDFs of comment letters submitted to regulatory notices which generally not only include firm and signatory names but also more detailed contact information generally present on firm stationary including address and telephone numbers. It is important to provide this to FINRA, but posting of this information publicly can result in unsolicited and unwanted contact from various groups or individuals. FINRA should consider following SEC practices and allowing comments to be submitted through an online form that will not reflect detailed contact information or otherwise should make efforts to redact detailed contact information when publicly posting PDFs of comment letters.

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<sup>12</sup> FINRA issued a public statement on its framework for economic impact assessment for proposed rulemaking in a [news release](#) on September 19, 2013.

## **7. FINRA should write its rules and guidance in plain English**

FINRA should reinforce a commitment to writing its rules and guidance in plain English. Securities markets and operations are inherently complicated, but writing rules and guidance that are clear, concise, well organized and in easily understandable language without unnecessary legalese will greatly benefit the industry by making rules more accessible to all industry professionals, not just compliance and legal staff. This approach will also result in a better understanding of expectations and less need for interpretive guidance. Federal regulators are required to write government documents in plain English<sup>13</sup> and expect securities firms to provide plain English disclosure to investors.<sup>14</sup> FINRA should also continue to embrace these standards with respect to its rulemaking, guidance, disclosures and other communications to make them more comprehensible to industry professionals and investors. We strongly support FINRA's recent collaboration in this area with Stanford Law School to address regulatory disclosures, fine print and disclosure creep.<sup>15</sup>

## **8. FINRA's formal guidance process works well but should be more timely for new rulemaking**

We appreciate FINRA's current efforts to provide guidance to the industry on its regulations and we believe those initiatives should continue and expand. The regulatory notices, FAQs, interpretive letters and other formal guidance that FINRA publishes are extremely helpful on the specific topics that they address.

However, FAQs on newly adopted rules should be vetted with the industry through trade groups and by direct engagement with firms and published as timely as possible, well in advance of implementation deadlines, rather than near or after the effective or compliance dates. For example, FINRA Rule 3210 was approved on April 7, 2016. FINRA's FAQs on Rule 3210 were very helpful, but were not published until March 17, 2017, just two weeks prior to the rule's effective date of April 3, 2017.

In the event FINRA issues multiple sets of FAQs or revisions to FAQs for certain rules, it may be an opportunity to consider whether the rules themselves should be re-drafted or expanded.

We appreciate FINRA linking to certain "Selected Notices" under each rule including Regulatory Notices and Notice to Members. We support linking to all relevant guidance considered to still be active and providing hyperlinks to all legacy notices since currently not all older content is directly available online.

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<sup>13</sup> [The Plain Writing Act](#) was adopted on October 13, 2010.

<sup>14</sup> The SEC [adopted](#) Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies including certain plain English requirements on January 13, 2009.

<sup>15</sup> Stanford Law School has offered a Law and Policy Lab, "[Exploding the Fine Print: Designing More Effective Legal Disclosures](#)," where the Practicum team worked with FINRA leaders to understand their current disclosure design requirements for financial companies and their rule-making process as they set new regulations for advertising disclosures. A report, [Designing 21st-Century Disclosures for Financial Decision Making](#), was published in July 2016.

If FINRA exam staff take interpretive positions that are not already clearly stated in rules or guidance, those positions should be published in formal guidance such as FAQs in the interest of promoting consistency and a level playing field across firms.

**9. FINRA should improve “one-off” guidance processes and allow firms to submit questions anonymously with answers posted publicly**

We believe there is reluctance among FINRA members against reaching out to FINRA staff for informal interpretive guidance in nuanced situations that may not be clearly addressed in existing notices or FAQs due to a lack of responsiveness or a fear of exposing the individual or firm to regulatory liability or inquiry. This arises from some experience with FINRA staff simply re-stating what has been previously published, or worse, having a “gotcha” reaction to identifying a potential deficiency. This should change and not be the case for any regulator, but especially an SRO that is premised on mutually beneficial collaboration and information exchange with its members. Firms should not be reluctant to ask for guidance, and if provided, firms will use the guidance to make meaningful enhancements to their compliance programs. We believe member firms want to do the right thing and comply with the rules, but often experience deficiencies due to unclear regulatory expectations.

We recommend FINRA create a means for firms to submit questions on an anonymous basis and have its staff screen requests and post answers on a public webpage. FINRA could filter out questions that do not make sense, that are answered in existing guidance or where the answers are very obvious. FINRA would post answers to reasonable questions for all to view and digest. FINRA could also moderate an additional interactive component for posting of comments or follow up questions. This would allow for candid questions and helpful answers that could be viewed and relied on by all firms in the industry, rather than having one-off “no names” inquiries submitted on behalf of one firm or a narrow audience by trade associations or outside law firms.

**10. FINRA should not engage in regulation by enforcement or pursue “broken windows” policies and should appropriately coordinate with other regulators**

We appreciate certain points raised by SIFMA with respect to regulation or rulemaking by enforcement.<sup>16</sup> We believe it is important to base enforcement on clear rule violations and established legal theories, rather than unofficial legal or interpretive positions.

We support a balanced enforcement program but also have concerns about aggressive “broken windows” enforcement policies, and the distraction and commitment of compliance and legal resources on relatively minor issues that would be better focused on areas of more significant risk to investors and markets.

We also believe that FINRA should not separately pursue enforcement actions against firms who are currently subject to enforcement actions by other regulators. This practice results

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<sup>16</sup> See SIFMA Letter at page 5 of 11.

in double efforts for member firms and is particularly pernicious when there is no evidence of customer harm.

### **11. FINRA should not engage in “regulation by technology specification”**

An analogous concern to regulation by enforcement is “regulation by technology specification.” Changes to technology specifications, including to the many fields in various regulatory reporting systems, can be very expensive and time consuming and the usefulness and usage expectations may not be well vetted by FINRA. FINRA should solicit comment on the impact of proposed technology changes and expectations on usage should be properly reviewed in a less formal but similar manner to new rulemaking given the significant resources that can be involved in these technology efforts. FINRA should also ensure that its technology specifications align with its rules, as this can assist firms with more efficient technology implementations to support FINRA rules.

#### **D. Engagement Through Member Relations, Education and Compliance Resources**

##### **FINRA should have tiered levels of online education and training**

We appreciate that FINRA provides a variety of online and on-demand education and training resources for industry professionals including compliance professional such as podcasts, webinars and “A Few Minutes with FINRA” and “FINRA Board Update” video interviews. This is a convenient way for many to review or study content while commuting or traveling for business.

Some of the information is presented at a very high level and without particular insight or detail beyond that contained in written versions on the same topic. This level of detail is appropriate for certain audiences who would prefer to listen rather than read content, but FINRA should also consider developing more in depth content or “deeper dives” into impact, analysis, and/or real-case examples to provide added value in its education and training. This would be particularly appropriate for educating firms on new rules, exam findings or enforcement actions. FINRA could categorize online education and training programs in levels such as “Overview” for basic reviews and “Advanced” for more detailed content.

#### **E. Engagement Through Investor Education**

##### **1. FINRA should focus its proprietary investor education on regulatory issues rather than general financial education**

FINRA publishes a wide variety of investor alerts ranging from baseline financial education topics to scam alerts and also provides updates on rule changes that are directly relevant to investors. These various types of alerts and notices targeted to investors are not always clearly differentiated. FINRA also makes available investment tools and financial calculators that are similar to those offered by member firms.

FINRA should clarify its goals with respect to investor education and focus more on regulatory matters such as fraud and scam alerts, fee and risk related guidance, as well as what new FINRA rules may mean to an individual investor. We are in favor of having educated investors making informed investment decisions especially as new types of low cost and low service business models may not provide detailed education on all costs and considerations (e.g. “free trade” offerings).

## **2. FINRA should partner with member firms and other industry vendors to deliver top quality financial education**

Fidelity puts substantial effort into educating our clients on investing and we believe there could be a stronger partnership between FINRA and the industry to develop best practices, increase collaboration and to complement each other’s efforts.

FINRA should partner with member firms and other “fintech” vendors who provide investor education to leverage the boundless expertise and dynamic technology that is available with respect to financial and product education and tools.

We have learned that there is no single or “one size fits all” solution to providing investor education since customers have varied levels of knowledge. Therefore, we first need to determine their starting point so we can provide them appropriate paths to desired learning goals. To achieve this, we take a personalized and customized approach rather than having a generic experience. This includes use of self-selecting information architecture and adaptive learning.

FINRA could review and leverage the strongest educational materials and tools available in the industry and make available to investors a “clearing house” of links to top quality content from member firms and other industry vendors. Much of this would include content that has generally already been reviewed by FINRA advertising staff. This would allow FINRA to redeploy its own educational resources on more targeted education focused on regulatory risks.

## **F. Engagement Through Reporting on FINRA Operations**

### **1. FINRA exam priorities letters are useful and we support more reporting on exam findings on an anonymized basis**

We believe FINRA’s annual exam priorities letter is a very useful resource to frame regulatory issues for business and compliance teams when discussing the control and supervisory environment. We know from experience that these priorities are reviewed and assessed in detail each year by member firms. We appreciate the thorough nature of the review and updated commentary made to perennial topics. We believe there should be some highlighting of new priorities so firms can focus on those emerging areas and we would also welcome a mid-year update to exam priorities highlighting any notable findings, developments or shifting areas of focus.

We also support FINRA's intention<sup>17</sup> to publish summary reports that outline key findings from examinations, on an anonymized basis, in selected areas. We agree this will serve as an additional tool firms can use to strengthen the control environment for their business.

## **2. FINRA reporting on enforcement actions should improve**

FINRA's Disciplinary Actions Online enforcement webpage is somewhat difficult to navigate. FINRA should develop a more useful and searchable database with stronger reporting capabilities that would allow, for example, users to download reports with cases ranked or grouped by fine amounts, topic areas, etc. The current search experience can result in "false positives" in search results due to factors such as not distinguishing between fines against individuals and member firms. In addition, certain cases include details on the original scope of the examination that become included in overbroad search results rather than focusing in on the particular violations.

FINRA could consider more prominently posting cases with fines above a certain threshold (e.g. \$100K) on the Disciplinary Actions Online enforcement webpage since it only issues press releases on certain cases. FINRA should also include more specificity in AWCs or in separate enforcement-related guidance on exactly what firms did incorrectly so that other firms can learn from those mistakes. FINRA should consider reporting on its top fine trends by topic with precise attribution of fines to violations so that firms understand the trends to prioritize internal reviews.

## **G. Additional Comments**

### **FINRA should coordinate and harmonize rules with other regulators**

We appreciate points made by SIFMA concerning cross-regulatory harmonization and coordination with respect to rulebooks, examinations and enforcement actions.<sup>18</sup> Firms that are members of multiple SROs and regulatory bodies can spend substantial resources navigating and managing inconsistent requirements across securities regulators. Having more uniform rules among securities regulators and making harmonized and coordinated changes will allow firms to deploy compliance resources more efficiently and towards mitigating more significant risks. Because FINRA has entered into Regulatory Service Agreements and 17d-2 Agreements with several SROs to perform examination, market regulation and enforcement functions, we believe FINRA is uniquely positioned to assist firms in understanding the nuanced differences in similar rules across regulators. FINRA, in coordination with other SROs, should create and publish "rule matrices" reflecting nuanced interpretations across similar rules of different SROs to the extent they are not harmonized.

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<sup>17</sup> FINRA indicated in the [cover letter](#) to its 2017 Regulatory and Examination Priorities Letter from January 4, 2017, that it will publish a summary report that outlines key findings from examinations in selected areas.

<sup>18</sup> See SIFMA Letter at page 10 of 11.

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Fidelity thanks FINRA for considering our comments. We would be pleased to provide any further information and respond to any questions that you may have.

Sincerely,



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Chief Compliance Officer  
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