

June 8, 2017

VIA ELECTRONIC MAIL

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

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

Dear Ms. Mitchell:

The National Society of Compliance Professionals (“NSCP”) submits this letter in response to FINRA’s request for comments on FINRA’s current programs to engage with member firms, investors and other stakeholders. NSCP is a nonprofit, membership organization with approximately 2,000 members and is dedicated to serving and supporting the compliance professional in the financial services industry in both the U.S. and Canada. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States and Canada devoted exclusively to compliance. For this reason, our comments will be limited to concerns that impact compliance programs and/or compliance professionals.

NSCP supports this initiative in particular and, more generally, commends FINRA for the steps taken to date to engage with its members through FINRA’s Member Relations and Education Department and to provide education and compliance resources.

NSCP’s responses to particular questions posed by the Special Notice follow. For convenience, we have set forth the particular questions to which we are responding under their subject matter headings.

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

- Do the existing committees enable appropriate engagement by FINRA with its members and other relevant stakeholders? Are there additional steps that FINRA can consider implementing to maximize the potential for obtaining new views and fresh perspectives on existing committees? Do the current committees enable sufficient engagement by FINRA with all of its different types of members, including members with different business models and challenges? Should FINRA re-visit to what extent there is industry versus non-industry participation on the various advisory and *ad hoc* committees?

Response: NSCP questions why the Compliance Advisory Committee, which provides input regarding the effect of current and proposed securities rules and regulation on members, does not include representatives from small and medium size firms. Currently, this committee is comprised only of 10 to 15 compliance officers drawn exclusively from large member firms. Because the impact that a rule or regulation may have on a member can vary significantly depending upon the size of the member firm, we believe that FINRA's rule approval and review process would benefit significantly from the input of representatives of small and medium size firms. Alternatively, to the extent FINRA is concerned that the inclusion of such representatives could make this committee too large or unwieldy, we would urge FINRA to consider creating separate Compliance Advisory Committees to represent the differing interests of small and medium sized members.

Response: NSCP does not encourage increased involvement of non-industry participants on the industry facing advisory and *ad hoc* committees as NSCP believes that such involvement would inhibit the free dialogue between industry and regulators.

- Are there additional areas not addressed by existing committees where FINRA should obtain periodic input? If so, would a new advisory or *ad hoc* committee be an appropriate vehicle for obtaining that advice? Are there any existing advisory or *ad hoc* committees that should be disbanded or consolidated?

Response: NSCP believes that it would be beneficial to FINRA if there were a committee comprised of representatives of a cross-section of FINRA's membership that provided input to FINRA management on recent examination findings and trends, including those examination findings that reflect a novel application of a rule or that appear to push the boundaries of what should be considered reasonable in terms of compliance (a/k/a alleged rulemaking-by-enforcement). NSCP believes that this committee could also provide guidance on where lines should be drawn between findings that warrant guidance (informal action) rather than enforcement (formal action). NSCP believes that the vast majority of FINRA members are trying diligently to comply fully with FINRA's rules and that subjecting diligent firms to enforcement actions is counterproductive where the findings reflect hair-splitting over the reasonableness of the firm's approach, or is a matter of a difference in rule interpretation that reflects more of a need for clearer guidance from FINRA than findings of wrong doing. Possibly, these functions could be performed by the Compliance Advisory Committee, though NSCP believes that the creation of an Examination Advisory Committee that would be dedicated to this function would be a better approach.

Response: NSCP also believes that it would be beneficial to FINRA if there were a committee that provided input on matters relating to municipal advisors. Indeed, as this is a relatively new area of oversight for FINRA, NSCP expects that input from municipal advisory members would be all the more valuable.

- Of the advisory and *ad hoc* committees, only the SFAB has elected members. Should FINRA consider including elected members on any other of its advisory or *ad hoc* committees? If so, which ones? What would be the advantages and disadvantages of a more formalized selection process for advisory and *ad hoc* committee membership?

Response: NSCP believes that the process for appointing members to FINRA committees that are composed of member firm representatives should be more transparent and that the process used to appoint members to committees should be revised to reduce or limit FINRA's dominant role in the selection of committee members. That said, NSCP also recognizes that selection by elections may not necessarily be the best approach as the time and expense of seeking election may discourage qualified persons. Instead, NSCP recommends that FINRA consider a process that would allow people interested in serving on a committee to submit their names for consideration. FINRA could then take into account geography, size, business line, expertise and other stated factors when considering committee members. Indeed, possibly, the selection process could be made randomly among applicants that satisfied the stated selection criteria. Such an approach would reduce, if not entirely eliminate, the conflict faced by committee members, which is whether their allegiance is to FINRA, which both appointed them and regulates their employers, or their allegiance is to the member firms that they represent, while also encouraging greater participation.

- **District Committees:** Do the District Committees continue to serve a useful purpose in light of their evolution over time? Should the scope of their activities be modified?

Response: NSCP believes that the District Committees are a valuable resource that could be used to greater effect in terms of educating FINRA on developments in the districts they represent. Moreover, NSCP believes that the value of the District Committees in this regard would be increased to the extent increased communication between District Committees and FINRA members was encouraged. This is in contrast to current District Committee practices that limit the type and means of communication with FINRA members.

- The District Committee, SFAB and NAMC rosters are available on FINRA's website. Should FINRA make publicly available all advisory and *ad hoc* committee rosters? Would the usefulness of this information outweigh concerns regarding inappropriate communication with or public disparagement of committee members?

Response: As stated earlier, with respect to the committees that are composed of member firm representatives, NSCP believes that greater transparency surrounding the committee process including the committee rosters would be beneficial in that it would facilitate meaningful communication with members of the committees and would contribute to an increased sense of legitimacy.

- Other than posting committee rosters, what other information should FINRA make available to create additional transparency around FINRA's committees?

Response: NSCP believes that it would be helpful if the charters of the various committees were available on FINRA's web site.

Request for Comment on FINRA's Retrospective Rule Reviews

- **Retrospective Review:** 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?

Response: NSCP commends FINRA for undertaking the retrospective rule review. NSCP believes that this should be an ongoing effort such that each rule would be subject to review at some set schedule (*e.g.*, every five or ten years). As part of this review, FINRA should seek comment from the District Committees and relevant advisory committees, including the Compliance Advisory Committee. FINRA's review should also consider whether relevant guidance is still reasonable, useful and sufficient, particularly in light of new technologies and business models, which can create gaps in existing coverage and interpretations.

It would also be helpful to subject each rule being reviewed to a new economic analysis. This analysis should consider the economic benefit of the rule in light of the rule's current costs to firms for implementation and maintenance. The analysis should also take into account whether the rule has been interpreted and/or enforced in a manner that requires an increased compliance response or, more generally, whether compliance costs have changed over time for other reasons. It should also consider the economic impact on the rule's benefits and compliance cost of other SEC and FINRA rules that have been adopted since the initial rule's adoption. This analysis should look not only at the cost of compliance, but whether the objective of the rule can be achieved in a manner that is clearer, simpler and cheaper from a compliance perspective. Further, the analysis should include an assessment of whether the class of members to whom the rule applies can be limited, as many members spend significant time and effort on rules that are not applicable to their business model. In some instances, the entire paradigm, or premise on which a rule was originally based, has become obsolete due to changes in technology, delivery mechanism, market conditions, or for other reasons. Accordingly, FINRA should not be afraid to be proactive and rescind rules that no longer achieve their intended purpose, or that have been rendered obsolete.

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?

Response: NSCP believes that its members would benefit from more, and more frequently updated, guidance as well as standardization of examiner comments with respect to disclosures that FINRA expects to see on certain communications with the public. It would be particularly helpful if FINRA published more guidance that identified common problems that it is seeing in its examination program. Guidance should not, however, lose sight of the “reasonableness” standard that is -explicit in FINRA’s rules. Moreover, while it may be helpful for guidance to identify “best practices,” far too often “best practices” end up becoming “expected practices” to which member firms are held in subsequent examinations. As “best practices” are not always reasonable practices when applied to particular firms, care should be taken to present best practices in a way that makes it very clear that such practices are not, in fact, required, necessarily expected, or even applicable to all firms irrespective of firm size or business model. In addition, NSCP members have suggested that guidance regarding FINRA’s expectation with respect to risk assessment would also be useful.

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

- Are there enhancements FINRA can make to Firm Gateway that would make it more useful?

Response: While NSCP’s members have a generally favorable view of the Firm Gateway, they have commented that when they experience difficulties with it, the level of support they receive is poor. As part of the solution to this problem, one member suggested that when an issue arises, FINRA should designate an individual as the person who will be available to the member firm with the issue through resolution of the problem.

- How useful is the data provided by the FINRA Report Center as a means of detecting potential compliance problems? What, if any, additional data could the FINRA Report Center provide that would help firms’ compliance efforts?

Response: NSCP believes that it would be helpful if FINRA member firm reports were revised to include comparative data that could be used by a member firm to benchmark its compliance against other FINRA member firms. NSCP also suggests that FINRA member “report cards” be provided in a more timely manner, to allow firms to effectuate corrective action, if necessary, and, when necessary, to prompt reporting to senior management, including the board of directors.

- Are the existing tools and tutorials listed on FINRA's compliance tools web page useful? Are there additional tools and tutorials that would be useful?

Response: NSCP members have identified the Mutual Fund Expense Analyzer as a useful resource for members and are hopeful that further enhancements to this resource can be made available to members.

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We commend FINRA for giving us this opportunity to present our views on how FINRA can engage its members and other stakeholders. NSCP would welcome the opportunity to answer any follow-up questions that FINRA may have on this submission, or to provide such further assistance as FINRA may request.

Thank you for your attention to these comments. Questions regarding the foregoing should be directed to the undersigned at (860) 672-0843.

Sincerely,



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