

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: FINRA 360 Engagement Initiative Response

Dear Ms. Mitchell,

Please accept this written response to FINRA's Engagement Initiative (herein the "360 Review"). It is submitted on behalf of the FINRA District 4 and District 8 Committees (herein the "Midwest Region Committees"). This is a unified response from all District Committee members of both the District 4 and District 8 Committees. The response represents a compilation of suggestions made by the members of the two District Committees. All of the members of the Midwest Region Committees agreed strongly that a compiled response was warranted given the nature and scope of the 360 Review as it relates to the FINRA District Committees. We also agreed that our perspective may offer a unique facet given our stewardship-based involvement with FINRA via the District Committee process. It should be noted the views expressed herein are the views and opinions of the members of the Midwest Region Committees and not necessarily those of the member firms they are employed by.

The members of the Midwest Region Committees would like to thank FINRA for its insight in granting additional time for responses to the 360 Review. The extensive scope and depth of the 360 Review is such that more time was warranted, and we thank FINRA for its understanding, allowing more time for firms (and the Midwest Region Committees) to submit responses and comments to the 360 Review.

Finally, a proper response needs to be preceded by an acknowledgement of the regulatory asymptotes firmly set in place by the Securities and Exchange Commission some years back via a 21A Report regarding the NASD's oversight of its members. The SEC's stance in that report was clear – NASD (now FINRA) is a regulator and its interactions with the industry should be structured as such. The SEC's stance in the report included mandates for NASD to eliminate conflicts and address optics of quid pro quo interactions. Thus, where the members of the Midwest Region Committees welcome and applaud the spirit and intent of the 360 Review to look for avenues to enhance the relationships and communication between member firms and FINRA, we acknowledge the truism that FINRA is our regulator. This means certain informational barriers and regulatory protocols will always need to be rigorously followed so as to avoid even the implication or appearance of any quid pro quo or conflict of interest violation between members and FINRA.

Therefore, our responses and recommendations on the following pages take the above points into consideration and were derived and constructed to place the needs and protections of the investing public first and foremost. The following responses are segmented into the same sections as laid out in the 360 Review for ease of application. Those responses are detailed below.

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

### All Committees

FINRA interaction with members is critical to the growth and effectiveness of our regulatory framework. The Midwest Region Committees view this access to FINRA via the advisory, ad hoc and District Committees as the primary contact between FINRA and its members for most of FINRA's initial initiatives and efforts. Therefore, this access should continue to be offered on a foundational basis where all firms have access to FINRA via these committees through term limits and member approvals.

Thus, all committee participations, whether advisory, ad hoc or District, should be subject to term limits. Even ad hoc committees with a limited life span should consider limiting the length of service of those members so as to address any appearances of favoritism to one member or firm. As an example, the District Committee members are elected into their roles by their peers for terms of three years. However, no one member can serve on the same District Committee in back-to-back three-year terms. This control allows other firms the opportunity to participate in and provide input on FINRA initiatives and efforts. This term limit concept should be applied to all FINRA committees.

In addition, FINRA should increase transparency of all committee meetings to the membership. This includes listing the committee members' names via rosters posted and maintained on FINRA's website for all committees, including advisory, ad hoc or District committees. This posting of all committee members on the website would include information like the term limits of each committee member, the process by which someone can follow to replace a member once their term is up, and reporting summaries on the meetings' agendas and outcomes.

And related to increasing transparency, the Midwest Region Committees also encourage FINRA to look for opportunities to enhance communication regarding how members can become advisory committee members, including how a member can express interest in and possibly gain access to being on an advisory committee.

Finally, as for the medium or manner in which committee meetings should be conducted, we believe that in-person meetings are much more effective than a conference call or computer-based video conference. We are sensitive to costs, however, and feel when appropriate, conference calls and computer-based video conferencing could be used to supplement the primary meeting venue of face-to-face meetings.

### Regulatory Advisory Committee

In specific observation to the Regulatory Advisory Committee (herein "RAC"), the Midwest Region Committees recommend that each District Committee elect a Chair from its seven members. These elected Chairs would serve a one-year term and represent their District on the RAC. This "election by peers" process would eliminate any perceived or optic issues of favoritism by FINRA to any one member and empower the District Committees to put forth their best candidates for the RAC. This is more in line with how the District Committees and the RAC used to be conducted prior to the SEC issuing their 21a Report, and we feel this change would better support the function and purpose of the RAC, yet still maintain the spirit of the SEC's 21a Report.

### Small Firm Advisory Board

The Midwest Region Committees strongly support the continuance of the Small Firm Advisory Board (herein "SFAB"), given the fact that over 75% of all member firms are deemed small firms (i.e., under

150 Registered Representatives). FINRA's continued efforts to support small firms is acknowledged and appreciated, and we recommend FINRA explore opportunities for the SFAB to continue those efforts.

#### Membership Committee

We see a large amount of overlap between the purpose of the District Committees and the charge of the Membership Committee. Stated another way, the Midwest Region Committees are unclear as to the distinctions between the two committees. As such, we recommend FINRA assess the synergy between the committees and look for opportunities to distinguish the purposes of them.

#### Firm Element Training Committee

Given the subject and content overlap between the Firm Element Training Committee and the Continuing Education Committee (herein "CEC"), we recommend that FINRA consider disbanding the Firm Element Training Committee and repurpose the CEC to also handle all Firm Element issues. Given the extensive knowledge and regulatory participation which already exists on the CEC, in addition to the significant continuity between the Regulatory and Firm Elements as both dealing with continuing education, we see the synergy between this merger of committee duties. If the workload of the Firm Element Committee is too extensive for a complete disbanding, we recommend that FINRA consider downsizing the Firm Element Committee and reorganize it as a sub-committee under the CEC – fully using the CEC's vast experience, knowledge, and resources, while also properly aligning continuing education under one group.

#### Market Surveillance Advisory Group

The Midwest Region Committees recommend that FINRA consider combining the Market Surveillance Advisory Group with the Market Regulation Committee given the scope and subject matter overlap. The Midwest Region Committees believe a working group under the Market Regulation Committee could be formed if a particular subject matter expert is required. This recommendation is based on the same fundamental purpose and benefit as stated in the CEC/Firm Element Committee response above.

#### District Committees

We recommend, as previously mentioned, that each District Committee should elect a Chair to represent their committee as the representative to the RAC. In addition, the Chair should be the primary contact for the District Committee members to FINRA in constructing the agenda for the District Committee meetings. The Chair would run the District Committee meetings, helping ensure both FINRA and member issues and topics are properly presented and discussed. This would be in-line with how the District Committees used to be conducted prior to the SEC 21a Report. We feel that this change would greatly benefit and enhance information and idea sharing between FINRA and its members while still maintaining the intent and purpose of the 21a Report.

With regard to the election process for the District Committees, we recommend FINRA host and support a "District Committee Election Portal," where members interested in running for a District Committee seat can access the portal and submit their application for candidacy, communicate with the membership, obtain information on the committee process, purpose, and responsibilities (perhaps via web-based videos), and ask questions. This is recommended as it is extremely difficult for a candidate to even obtain a list of who their voting member constituents are, let alone find a venue in which to reach them about their candidacy. The cost to a member firm of such an effort is high as well. Thus, a FINRA-hosted portal is recommended to support the District elections as well as to help ensure fairness to all members of access to the District Committees.

Finally, the Midwest Region Committees recommend that FINRA look for opportunities to enhance and increase the information shared with the members of the District Committees – before the meetings take place. This would allow the members to reach out to their District constituents on these points and truly act as representatives. A portal page run by FINRA, for each District, might best facilitate this pre-communication and assist the members in their representative duties.

## **2. Engagement in Connection with FINRA Rule Making**

Member firm engagement with FINRA, to discuss enhancements and improvements to FINRA's rule set, may be the most important aspect of interactions between members and FINRA. FINRA rules are the backbone of much of the financial services industry, and their construct, enforcement, and improvement needs to have industry involvement to help ensure the regulatory fabric of our financial services industry infrastructure is effective, efficient, and fair to the U.S. investor. The Midwest Region Committees feel there is no higher priority than this issue.

### FINRA's Rule Making Process

The Midwest Region Committees believe it would be helpful when FINRA proposes a new or amended rule to subsequently post a link to the responses/comments on the Regulatory Notice. In addition, after the SEC's approval of a new or changed rule, we suggest FINRA post a link to FINRA's responses to comments received by the SEC after publication of the proposed rule change in the Federal Register, so firms and individuals can read why comments were or were not incorporated into the final rule.

We also recommend FINRA provide more time to respond to proposed rules. We work in a busy, complicated, and intricate industry, and many proposed rules require time to digest, vet, and respond to. This process often entails using industry associations, outside counsel, industry roundtables, etc. We feel it is a reasonable tradeoff to the eventual implementation of a proposed rule to provide more time for meaningful comments to help ensure the rule is properly vetted and considered. Therefore, we suggest more time be provided to properly and effectively respond to FINRA proposed rules.

Finally, while the Midwest Region Committees acknowledge the value of a well-written, detailed comment letter, it is our impression that the process to actually write and submit a comment letter is perceived by many individuals and firms to be very formal and time-consuming. We therefore encourage FINRA to look for opportunities to make the comment process less formal, which would likely encourage more firms to participate. One example of a less formal process could be the use of FINRA asking simple questions that can be answered quickly, like in a survey. We acknowledge the point that where helpful, if not written appropriately, surveys can be frustrating and not allow the user to provide a detailed answer. Thus, when appropriate, surveys should be used which allow for full comment.

### FINRA's Retrospective Rule Reviews

We feel there are opportunities for FINRA to explore options to provide more transparency regarding which rules have been retrospectively reviewed, the outcomes of those reviews, and which rules are scheduled for upcoming retrospective reviews. We recommend using the District Committees and/or the RAC to explore these options.

### FINRA's Regulatory Guidance

The Midwest Region Committees believe Interpretive Letters to be extremely beneficial to their firms' regulatory compliance function. However, we also feel there are many member firms that are unaware of the Interpretive Letter benefits and process. Several members of the Midwest Region Committees have also experienced a reluctance from FINRA to provide an Interpretive Letter on given matters. We

recommend FINRA explore options to expand and communicate this guidance provided to the membership. This includes recommendations for FINRA to look for opportunities to better resource and support the Interpretive Letter program as well as enhance the membership's awareness of the guidance within the Interpretive Letters.

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

The Midwest Region Committees acknowledge the importance of FINRA's Member Relations group, but, more importantly, we want to express our appreciation to those FINRA employees supporting that function led by Chip Jones. We thank him and his department for their efforts and their support of the membership.

#### Member Firm Outreach

The Midwest Region Committees believe these meetings have been very successful and productive. They provide large groups of members the opportunity to meet at one place to best hear and discuss issues and learn of initiatives on a mass basis. However, these types of engagements have seemed to have dwindled in the past years, and we therefore recommend FINRA explore options to revitalize these meetings.

#### In-Person and On-Demand Education

The Midwest Region Committees strongly feel the FINRA Annual Conferences have been of and continue to be of great value, and the access to these conferences has increased now that many of the sessions are available via the web for a considerable discounted fee. We recommend FINRA offer more of the Annual Conference sessions via the web and continue to look for opportunities to keep the conference affordable for its members.

For the conferences listed below, the Midwest Region Committees recommend FINRA continue their efforts and support of these very beneficial conferences. But to ensure member participation and attendance, we recommend that the conferences be appropriately dispersed throughout the year so as to allow firms time to attend each of the conferences if they so choose.

- Annual Small Firm Conference
- Senior Investor Protection Conference
- Cybersecurity Conference
- Advertising Regulation Conference
- Fixed Income Conference

Given the lack of geographical connectivity to the South Region Compliance Seminar, the Midwest Region Committees cannot comment on the effectiveness of this particular educational venue. However, to the extent this conference is successful, we recommend FINRA provide every region a regional conference to ensure fairness of education access for all members throughout the country.

The Midwest Region Committees feel strongly that the Region Compliance Outreach Seminars co-hosted with the SEC are extremely beneficial. The dual-regulatory nature of the SEC and FINRA does demand that opportunities continue to be explored to offer education to FINRA membership from both regulators on a unified front. Thus, we believe these seminars should continue to be supported and offered.

One of the members of the Midwest Region Committees has taught at Wharton for FINRA's Certified Regulatory Compliance Professional (CRCP) program. The certification is highly regarded, and we feel that FINRA should explore opportunities to enhance the memberships' awareness and benefits of the CRCP.

Finally, we value the video series FINRA offers: "A Few Minutes with FINRA." These short but concise videos offer significant guidance and information in a time sensitive manner in a venue in which many members are accessing. Thus, the Midwest Region Committees recommend FINRA increase the number of videos offered to the membership and to continue to cover a wider array of topics and issues.

#### FINRA Contact System ("FCS")

The Midwest Region Committees feel there are just too many facets, forms and systems that member firms must access to provide information to FINRA. Any opportunity to consolidate these different systems is highly welcomed. Therefore, the Midwest Region Committees highly recommend amending the Form BD to require the contact information FINRA seeks in its FCS, so that all requested information on the FCS is contained in one spot... the Form BD. This would simplify the data processes for member firms, while consolidating required information in one place, on the Form BD, that is best aligned for the industry.

#### FINRA Report Center

The Midwest Region Committee believes firms would benefit from FINRA efforts to increase awareness of the valuable information contained on FINRA's Report Center. For example, the Registered Representative Composite Report contains important metrics on a firm's Registered Representative disclosure data as it relates to the industry averages. This data is informative to firms in their recruiting efforts and can greatly assist them in their risk management efforts. FINRA recently released a podcast on available FINRA report cards, and we recommend FINRA increase its efforts to bring greater awareness of these tools to the membership.

#### **4. Engagement Through Investor Education**

Given the matrixed regulatory regime of the United States financial services system, investor education is an area that the Midwest Region Committees feels FINRA should expand into. Additional resources should be spent in reaching out to the investing public to better educate them on who FINRA is, what FINRA's charge is, and how FINRA fits into the regulatory framework.

The Midwest Region Committees also recommends that FINRA explore the benefit of partnering with the SEC and NASAA to draft an investor education piece to better inform the investing public on who the securities regulators are in the United States, their purposes, and how they coordinate/interact with each other. This informational pamphlet could then be posted on the websites of the SEC, FINRA, and all the state securities regulators to ensure proper and effective distribution of the information.

#### Investor Tools

All of the members of the Midwest Region Committees are familiar with FINRA's Securities Helpline for Seniors. However, many of the Midwest Region Committee members feel that FINRA could increase the awareness of the helpline (for both the investing public as well as the membership) as a tool and resource.

We also recommend FINRA continue to enhance its Fund Expense Analyzer tool to provide a greater breadth of information of mutual funds, including allowing firms or Registered Representatives to do

analysis of recurring purchases (vs. the current limitation of a one-time purchase). We are aware of recent efforts of FINRA to do this, and we encourage the work to continue. We also recommend this type of very valuable product information be provided for variable annuities and variable life insurance, as more and better consolidated expense information on these insurance-based products is currently limited in a consolidated venue. FINRA supporting an “Annuity Expense Analyzer” would be greatly beneficial to both the membership and the investing public.

#### FINRA Investor Education Foundation

The Midwest Region Committees applaud FINRA’s efforts to engage investors in an educational format. We recommend FINRA continue its efforts by directing its Investor Education Foundation monies towards the universities and colleges across the United States to better educate young adults and encourage greater participation in our industry by graduating students. One particular program could be the FINRA General Counsel department creating and packaging a legal educational course to be offered to law schools and universities across the country via adjunct legal professors from the industry. One of the members of the Midwest Region Committees created and taught such a course as an adjunct legal professor and it was extremely successful. Law schools do offer securities law courses, but we are not aware of any schools offering a course specific to educating students on the regulatory framework of the primary and secondary markets and product and service distribution to the investing public. This effort would also create a stronger bond between law schools and FINRA which in turn would drive greater participation in the industry by young adults.

### **5. Reporting on FINRA Operations**

#### Information on FINRA Board Activities

The Midwest Region Committees strongly feel that increased transparency on Board activities would be highly beneficial to the membership: agendas, discussions, outcomes, etc. should all be posted and disclosed. We recommend FINRA create a page on their website dedicated solely to FINRA Board activity, so as to be accessible by the membership and investing public alike. We also feel this transparency would assist in the visibility and awareness of FINRA to the investing public.

#### Information on Enforcement and Examination Programs

The Midwest Region Committees are aware of the Annual Examination Priorities Letter and find it useful as a tool to prepare for examinations and FINRA priorities and points of emphasis. This letter being published early in the year is helpful for firms, as they often review their policies, procedures and controls for those areas identified in the letter by FINRA. However, the Examination Priorities Letter has become very long, and assessing it for the top issues or priorities has become difficult. We recommend FINRA continue to publish this letter, but look for ways to make it more concise and succinct, focusing on the top issues for the year.

The disciplinary and decision information FINRA publishes is very helpful. The Midwest Region Committees recommend that FINRA look for ways for members to sign-up for this information to be “pushed” to them as compared to the current method of distribution where members have to go and retrieve the information from FINRA’s website.

Additionally, the Midwest Region Committees believes there would be a benefit if the Monthly Disciplinary Action report was broken down by categories such as Supervision, Suitability, Outside Business Activities, Private Securities Transactions, electronic communications, etc. This would help firms to identify certain groups of actions for internal training at their firms.

### Communication with Members Evaluation of FINRA

While FINRA examinations are a key component to monitoring firms' activities, the Midwest Region Committees are not aware of any FINRA communication as to FINRA's examination staff and its effectiveness. We feel FINRA is not evaluating its examiners with input from its members. District Committees could be charged with this action as part of their communication with their constituents.

We understand the requirement of unbiased regulation as detailed in the SEC 21a Report. However, we feel the benefits of taking in member comments on the examination program would ultimately help the examination program.

## **6. Other Communications, News and Reporting Informational Resources**

### Public Assistance Education Channels

The Midwest Region Committees applaud FINRA's efforts and its support of the financial industry and investing public, and we are all aware of the significant resources FINRA has spent in supporting the six different phone lines as listed below:

- Securities Helpline for Seniors
- Investor Complaint Center
- Whistleblower Tip-Line
- Office of the Ombudsman
- File a Regulatory Tip
- Contact FINRA

However, we see synergy between the efforts of FINRA advertising and promoting its name better in line with consolidating all of these numbers into one 800 number. Thus, we recommend FINRA promote one toll-free number containing options for all of these efforts it currently supports with six different lines. One 800 number better supports industry and investor awareness of FINRA while providing easier access to FINRA by its members.

### Staff Point of Contact Information

Each FINRA member is assigned a regulatory coordinator. Member communication with its assigned coordinator varies due to the needs of the member and the issues presented that require coordinator intervention. We recommend a regional outreach event that could serve as a "meet and greet," allowing each member representative to meet face-to-face with their assigned coordinator. This could be part of a larger educational event as well.

### Email Subscription Service

The Midwest Region Committees find FINRA's weekly update extremely helpful. A member may sign-up for this service and receive FINRA weekly updates via email. The weekly update information ranges from recent enforcement actions to rule filings, to upcoming conferences and Regulatory Notices. We feel FINRA should continue this service and look for ways to expand the information contained in the updates.



We appreciate the opportunity to provide comments and feedback on this important FINRA initiative.

Respectfully submitted,

Kenneth M. Cherrier

On Behalf of the FINRA District 4 and District 8 Committees

FINRA District 4 Committee

|                     |                 |
|---------------------|-----------------|
| Mathew Rothchild    | Small Firm Seat |
| Nancy Richter       | Small Firm Seat |
| Amy Shelton         | Small Firm Seat |
| Jessica Pastorino   | Mid Firm Seat   |
| Mark Gherity        | Large Firm Seat |
| Kenneth M. Cherrier | Large Firm Seat |
| Mark Lasswell       | Large Firm Seat |

FINRA District 8 Committee

|                    |                 |
|--------------------|-----------------|
| Chuck Millington   | Small Firm Seat |
| Stephen Mack       | Small Firm Seat |
| Jeffrey Bley       | Large Firm Seat |
| Jeff Levine        | Mid Firm Seat   |
| Jeffrey Freiburger | Large Firm Seat |
| Eric Bederman      | Small Firm Seat |
| Jeffery Williams   | Large Firm Seat |