FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA EMAIL

July 14, 2025

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 25-07 (FINRA Requests Comment on Modernizing FINRA Rules, Guidance, and Processes for the Organization and Operation of Member Workplaces)

Dear Ms. Mitchell:

On April 14, 2025, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 25-07 to request comment on how FINRA can evolve its rules, guidance, and processes to reflect modern business practices and markets, support innovation and new technologies, promote efficiency, and reduce unnecessary regulatory burdens (the Notice). FSI appreciates the opportunity to comment on the Notice, and supports FINRA's focus on modernizing its rules, guidance, and processes to align with modern business practices and technologies. As FINRA acknowledges in the Notice, advances in technology and the proliferation of hybrid work have transformed the workplace for broker-dealers and their associated persons. FSI members have been at the forefront of adopting technologies to create operational efficiencies, deliver better service, create a more diverse workforce and, ultimately, drive better outcomes for their customers.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 152,000 independent financial advisors.[1] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).[2]

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning,

[1] Tiburon Strategic Advisors, Research on Independent Advisors (Dec. 18, 2024) (citing 152,200 in 2023).

[2] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm, or a dual registrant.

implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $7.2 billion annually to federal, state, and local government taxes.[3]

Discussion

FSI's appreciates the opportunity to comment on the Notice and believes that FINRA's goal of rule modernization is appropriate given rapid technological advances, changing business practices, and shifting investor preferences. FSI's letter focuses on seven general topics raised in the Notice and makes several recommendations on ways in which FINRA can implement changes that would eliminate unnecessary burdens and ambiguities while maintaining investor protection and market integrity. FSI looks forward to further engaging with FINRA on advancing common-sense regulatory changes that would have a significant benefit to its members, the industry, and investors.

1. Payment of Transaction-Based Compensation to Registered Representatives' Personal Services Entities (PSEs)

FSI has long advocated for flexibility in the payment of transaction-based compensation (TBC) to registered representatives' PSEs. This issue is of paramount importance to FSI's members, who are IBDs that provide back-office and compliance support to independent registered representatives. The central characteristic of the IBD business model is the classification of registered representatives as independent contractors, rather than employees, of the IBD. Similar to independent contractors in other industries, many registered representatives establish PSEs for succession and tax planning purposes and may use PSEs to engage in other non-brokerage-related business endeavors. For some registered representatives, those other business endeavors may include those financial in nature, subject to regulatory oversight by other regulators, such as the SEC (with regard to investment advisory activity) or state insurance regulators (with regard to insurance activity).

The payment of advisory compensation to a PSE is generally permitted, while the payment of TBC by a broker-dealer to a PSE is subject to great uncertainty due to certain SEC staff guidance and FINRA Rule 2040 (Payments to Unregistered Persons). This uncertainty creates a situation where many dual-registrants permit their personnel to receive advisory compensation through a PSE but require that TBC be paid directly to the individual. This issue gets at one of the core goals of FINRA's rule modernization initiative – examining differences between FINRA requirements for broker-dealers and requirements that apply to investment advisers engaging in similar activity.[4]

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[3] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

[4] See FINRA Regulatory Notice 25-04, FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons at p. 5 (March 12, 2025), available here.

The Notice cites to a recent SEC statement that TBC "is not *in itself* determinative of broker status."[5] However, SEC staff have generally taken the position through no-action letters that the receipt of TBC is a key factor in determining whether a person or entity is acting as a broker-dealer. The SEC's Guide to Broker-Dealer Registration, which is available on its website, cites to one of these no-action letters in stating that:

> The law does not permit unregistered entities to receive commission income on behalf of a registered representative. **For example, associated persons cannot set up a separate entity to receive commission checks.** FINRA Rule 2040 prohibits members from paying transaction-based compensation to non-registered persons.[6]

FINRA Rule 2040 also serves as a barrier to the payment of TBC to a PSE in that it prohibits member firms from paying TBC to non-registered persons.

In 2019, FSI submitted a request for no-action relief to the SEC's Division of Trading and Markets (the "Division") (the "No-Action Request").[7] The No-Action Request requested that the Division provide assurance that it would not recommend enforcement action to the SEC under Section 15(a) of the Exchange Act against a registered representative-owned PSE that receives TBC. The No-Action Request noted that the PSE would not be engaged in soliciting, executing, or negotiating securities transactions, or engaged in any other activities that would reasonably cause the PSE to meet the definition of "broker" or "dealer" under section 3(a)(4)(A) or section 3(a)(5)(a), respectively, under the Exchange Act. The No-Action Request included a number of conditions designed to ensure that supervision of registered representatives' brokerage activities would remain with the broker-dealer. The Division has not yet acted on the Request.

FSI believes that allowing the payment of TBC to PSEs would provide significant benefits to broker-dealers and their registered representatives by reducing the cost of doing business without causing any investor protection concerns. It would also help facilitate the success of many small businesses run by independent contractor registered representatives. FSI suggests that FINRA take four steps to help facilitate the payment of TBC to PSEs: (1) issue guidance clarifying that the payment of TBC to non-registered PSEs does not violate FINRA Rule 2040; (2) urge the SEC to act on FSI's No-Action Request, which would provide much-needed certainty to many broker-dealers while retaining important investor protections; (3) request that the SEC withdraw certain no-action letters that cause uncertainty about PSEs needing to register as a broker or dealer under the Exchange Act;[8] and (4) request that the SEC remove the above-quoted statement from its Guide to Broker-Dealer Registration, particularly in light of the SEC statement cited in the Notice that TBC "is not *in itself* determinative of broker status."

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[5] See the Notice at pg. 10 (citing Exchange Act Release No. 90112, Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders (October 7, 2020)).

[6] Guide to Broker-Dealer Registration, SEC Division of Trading and Markets (Apr. 2008), available here (citing *Wolff Juall Investments, LLC*, SEC No-Action Letter (May 17, 2005)).

[7] FSI has attached the No-Action Request as **Exhibit A** to this letter.

[8] *See, e.g.*, *Wolff Juall Investments, LLC* (avail. May 17, 2005), available here; *Vanasco, Wayne & Genelly*, SEC Interpretive Letter (avail. Feb. 17, 1999); *Birchtree Financial Services, Inc.* (avail. Sept. 22, 1998).

2. Branch Offices and Hybrid Work

a. FINRA Should Re-Evaluate Rule 3110's Office Definitions and Inspection Requirements

FINRA Rule 3110 mandates inspection cycles based on whether a location is classified as an Office of Supervisory Jurisdiction ("OSJ"), branch office, supervisory branch office, or non-branch location. These office classifications have definitions that date back to the late-1980s (for OSJs)[9] and early 2000s (for branch offices)[10] when broker-dealers primarily operated out of physical offices with paper records. Modern technology and hybrid work make these classifications outdated.

FSI recommends updating Rule 3110 to align with modern business practices. Under Rule 3110, a broker-dealer is required to register a location as an OSJ if the individual(s) at that location perform one of seven prescribed functions, including the "final approval of retail communications" and the "final acceptance (approval) of new accounts on behalf of the member." These functions, while important, are not performed in the same way today that they were in the 1980s, when they were originally included as part of the definition. Today, the review of retail communications and the acceptance of new accounts (along with nearly every other function performed by personnel of a broker-dealer) are performed electronically. The idea that a location must be registered as an OSJ, and therefore be subject to an annual inspection, simply because a person utilizes their computer at the location to electronically approve retail communications or accept new accounts is illogical.

FINRA's prescriptive approach with regard to office classifications and inspections differs from the risk-based elements that it included as part of the Residential Supervisory Location and Remote Inspections Pilot Program rulemakings,[11] which allow firms to conduct a risk-assessment of a particular location to determine if it can take advantage of the flexibility afforded by those rules. It also differs significantly from requirements applicable to investment advisers under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Advisers Act does not mandate investment advisers to classify business locations by subjective criteria. Instead, it allows advisers to create a reasonable supervisory program tailored to their business.

FSI believes that FINRA should take a holistic and comprehensive approach to modernizing Rule 3110. FSI understands that any changes to Rule 3110 will be challenging as its concepts are embedded in federal and state securities laws.[12] However, FSI believes that through engagement

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[9] See NASD Notice to Members 88-84, SEC Approval of Amendments to NASD Rules of Fair Practice and Conforming Amendments to the By-Laws Re: Supervisory Practices and Definitions of Branch Office and Office of Supervisory Jurisdiction (Nov. 1, 1998), available here (amending the definition of OSJ in Article III, Section 27 of the NASD Rules of Fair Practice to include the seven enumerated categories of activities that are included in a similar form today).

[10] See NASD Notice to Members 05-67, SEC Approves Uniform Branch Office Definition and Related Interpretive Material (Oct. 6, 2005) ("NTM 05-67"), available here.

[11] See FINRA Regulatory Notice 24-02, FINRA Adopts FINRA Rule 3110.19 (Residential Supervisory Location) and FINRA Rule 3110.18 (Remote Inspections Pilot Program), and Announces End of Temporary Relief Related to Updates of Office Information on Forms U4 and BR (Jan. 23, 2024), available here.

[12] By way of example, FSI understands that the current definition of "branch office" was derived from the SEC's definition of "office" in Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, as amended (the "Exchange

with various stakeholders, including industry members and other regulators, FINRA should work to develop a reasoned rule that conforms to modern business practices.

b. FINRA Should Provide Further Flexibility in the Designation of RSLs

FSI appreciates FINRA's adoption of the RSL office classification, which provides much-needed flexibility with regard to private residences at which a registered person engages in specified supervisory activities. However, FSI believes that FINRA should eliminate as a disqualifying condition that "one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member." FSI (as it has in past comment letters related to the RSL rulemaking)[13] believes that this condition discounts experienced supervisory personnel who may switch firms or those associated persons who are stand-outs at a firm, resulting in promotion to a supervisory role. In both cases, appropriate training on firm operations and supervisory responsibilities more reasonably addresses any regulatory concerns without creating barriers to hiring and retaining talent.

Since the COVID-19 pandemic, hiring and training personnel remotely has become a normal practice. The workforce, especially experienced and qualified candidates, expects work location flexibility from the onset of a new role, and this disqualifying condition places an unnecessary impediment on firms to hire and retain talent in a competitive job market. Further, flexible work arrangements and work from home are critical to supporting a diverse workforce. The "one year experience" requirement has the unintended consequence of discouraging firms from offering work from home options, which could discourage caregivers, who are frequently women, and younger generations from entering the industry.

c. FINRA Should Provide Guidance Regarding Form BR Question on Space Sharing Arrangements

Item 4(A) of Form BR asks, "[d]oes this branch office occupy or share space with or jointly market with any other *investment-related* activity."[14] Many FSI members have adopted remote or hybrid work policies whereby registered persons work from their homes on a part-time or full-time basis. Depending on the function performed by the person, their home may fall within the branch office or OSJ definition, necessitating a Form BR filing.

In situations where two cohabitating family members work from the same residential location for different financial institutions, and one of them conducts activities that require branch office registration, a firm may be required to answer "yes" to Item 4(A) and disclose the other financial institution. A "yes" answer to Item 4(A) in this scenario incorrectly creates the impression that two financial institutions have made a conscious decision to share space and/or jointly market their services. FSI requests that FINRA issue guidance that firms can answer "no" to Item 4(A) on Form BR when a "space sharing" arrangement only exists because of two cohabiting individuals who work for different financial institutions.

Act"). See Notice to Members 05-67. FINRA's definition of "branch office" has been incorporated, either directly or by reference, in many state blue sky laws.

[13] FSI filed comment letters related to the RSL rulemaking covering the points raised in this letter on November 23, 2022 and April 27, 2023.

[14] A copy of Form BR is available here.

3. Electronic Delivery

FSI recommends that FINRA update its electronic delivery framework to reflect technological advancements and societal changes over the past 30 years. FSI recognizes that implementing a more flexible framework around electronic delivery will require collaboration with the SEC. The current SEC guidance governing the electronic delivery of documents, which FINRA effectively adopted in Notice to Members 98-03,[15] was developed during the mid-1990s when use of the internet for information delivery was still in its infancy.[16] In relevant part, the guidance requires, as a practical matter, that firms obtain an investor's affirmative consent to electronic delivery in advance. This affirmative consent requirement imposes significant challenges considering the extensive and widespread use of the internet and has the practical consequence of limiting the widespread and effective application of electronic delivery.

FINRA should collaborate with the SEC to update its electronic delivery framework. Specifically, FSI supports a structure that would permit broker-dealers to default to electronic delivery, provided they inform customers that documents will be delivered electronically and offer an option for paper delivery. While FINRA engages with the SEC on this endeavor, FSI recommends that FINRA independently modernize its electronic delivery guidance concerning disclosure obligations imposed solely under FINRA rules. For instance, FINRA Rule 2231 (Customer Account Statements) mandates that member firms send quarterly statements to customers detailing their account activity, securities positions, and money balances. Supplementary Material .03 to Rule 2231 ("SM.03") states that "[a] member may satisfy its delivery obligations . . . by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes." FSI advocates for FINRA to amend SM.03 to permit broker-dealers to default to electronic delivery, contingent upon providing adequate disclosure and an opt-out option for customers.

4. Negative Consent

FINRA's guidance regarding the use of negative consent to effectuate customer account transfers largely dates back to the early-2000s. Originally established through Interpretive Letters, Regulatory Notices, and Office of the General Counsel statements that are approximately 20 years old, this guidance generally prohibits account transfers by negative consent except in specific cases, such as: (1) a member experiencing financial or operational difficulties; (2) an introducing firm no longer in business; (3) changes in a networking arrangement with a financial institution; (4) an acquisition or merger of a member firm; (5) a change in clearing firm by an introducing firm; [17] (6) a member ending a certain business line (e.g., a firm ceasing to offer retail brokerage services);[18]

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[15] See NASD Notice to Members 98-03, Electronic Delivery of Information Between Members and Their Customers (Jan. 1, 1998), pg. 14, available here.

[16] See Use of Electronic Media for Delivery Purposes, Release No. 33-7233 (Oct. 6, 1995), available here; See *also* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Release No. 33-7288 (May 9, 1996), available here.

[17] See NASD Notice to Members 02-57 ("NTM 02-57") (Bulk Transfer of Customer Accounts) (Sept. 2022), available here.

[18] See Interpretive Letter to Michael R. Trocchio, Esq., Bingham McCutchen LLP (Jun. 2, 2006), available here.

(7) certain changes to the broker-dealer of record on a direct-held mutual fund or variable annuity;[19] (8) effecting the bulk transfer of employee equity compensation plan accounts;[20] and (9) assigning orphan accounts to an introducing broker-dealer on a clearing firm's platform.[21] For transfers that fall outside these nine specific categories, broker-dealers are required to gain a customer's affirmative consent to an account transfer.

FSI members find the current negative consent framework restrictive and outdated and not reflective of modern business practices and customer preferences. FINRA typically requires affirmative consent for account transfers to ensure that customers have enough time and information to decide whether to object.[22] FSI believes that this risk could be properly addressed through a principles-based framework focusing on: (1) whether the contract between the broker-dealer and the customer allows the broker-dealer to transfer the customer's account by negative consent; (2) whether adequate notice is given of a transfer being made by negative consent; and (3) whether the customer has a fair chance to reject the transfer. FSI believes that this approach would provide flexibility for broker-dealers while maintaining important investor protections.

5. Fraud

FSI recognizes FINRA's commitment to enhancing protections for senior and vulnerable investors, and equipping broker-dealers with the necessary tools to help combat financial exploitation. FSI members commend FINRA's implementation of, and subsequent amendments to, FINRA Rule 2165 (Financial Exploitation of Specified Adults), which allows firms to temporarily hold transactions and disbursements if they reasonably suspect financial exploitation of a "Specified Adult." FSI acknowledges that Rule 2165 has played a pivotal role in combating financial exploitation, and proposes that its scope could be broadened in two significant aspects.

The Notice asks whether "FINRA [should] extend the temporary hold period in Rule 2165." Rule 2165 currently permits a broker-dealer to hold a transaction or disbursement for a maximum period of 55-business days. FSI members have observed that there are many cases of financial exploitation that cannot be resolved within this timeframe. In 2020, FINRA conducted an anonymous survey among all member firms to gather their opinions on the effectiveness of Rule 2165.[23] According to the survey, 59% of respondents indicated that it took an average of 51-100 days to resolve a matter. Even with a 55-business-day hold period, firms often face the challenge of deciding whether to proceed with a disbursement or execute a securities transaction before they can complete an investigation and ensure that a customer has not been exploited. Expanding the hold period is even more important given the rising prevalence and complexity of scams, which require firms to expend greater resources and time to investigate possible cases of exploitation.

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[19] See the memorandum to provide additional guidance on Notice to Members 04-72 (Nov. 8, 2004), published by NASD Office of General Counsel, Regulatory Policy and Oversight, available here.

[20] See Interpretive Letter to T. Douglas Hollowell, UBS Financial Services, Inc., (Jul. 24, 2020), available here.

[21] See Interpretive Letter to Janet Dyer, National Financial Services, LLC (Apr. 26, 2023), available here.

[22] See NTM 02-57 at pg. 564.

[23] See Securities Exchange Act Release No. 92225, Proposed Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults) (June 22, 2021), 86 FR 34084 (June 28, 2021) (Notice of Filing of File No. SR-FINRA-2021-016), pg. 15, available here.

The Notice also asks whether Rule 2165 should be expanded "beyond 'specified adults' to any customer where there is a reasonable belief of financial exploitation." The term "specified adult" currently includes "a natural person age 65 and older" and "a natural person 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests." Many FSI members have encountered situations where they suspect a customer is being financially exploited, but that customer does not fit within the definition of a "specified adult." In such cases, the firm cannot utilize Rule 2165's safe harbor to place a hold on a suspicious transaction or disbursement. Considering the overall increase in financial exploitation and the growing complexity of scams, FSI advocates for the expansion of Rule 2165's safe harbor to include any customer whom a broker-dealer reasonably suspects is subject to financial exploitation.

6. Recordkeeping and Digital Communications

FSI appreciates FINRA's focus in the Notice on adapting its recordkeeping rules to align with modern communication practices. As FINRA describes in the Notice, broker-dealers and their customers have embraced a variety of digital communication channels, including e-mail, text messaging, and video applications. The extensive reach of Rule 17a-4(b)(4) under the Exchange Act, which mandates that broker-dealers retain communications related to their "business as such," and FINRA 4511, have presented challenges for broker-dealers. Firms struggle to implement the types of contemporary communications practices that are demanded by their customers while adhering to regulations established in an era when such communication practices and methods did not exist. FSI believes that FINRA should work with the SEC to modernize recordkeeping rules around digital communications.

Beyond digital communications, the Notice requests comment on other recordkeeping challenges, such as obligations related to artificial intelligence-generated communications and dynamic information displayed on websites and digital platforms. Over the last two years, FSI has undertaken initiatives to advance our understanding of AI and to serve as a resource for our members as they navigate potential use-cases for this emerging technology. FSI has formed a Task Force specifically focused on AI. In particular, the AI Task Force has a *Regulatory Project Group* that is both tracking AI-related regulatory developments and refining a set of guiding principles for responsible AI regulation that will guide FSI on this important topic. As we continue to work with members on this initiative, we would welcome meeting with FINRA to discuss additional feedback on this area as this member group's work advances.

7. Continuing Education

The Notice requests comment on whether "FINRA should consider any changes to the Continuing Education (CE) program." FSI believes that FINRA's CE program could be improved by placing greater emphasis on educating registered representatives on recently adopted and/or amended regulatory requirements. Further, FSI believes that registered representatives should be afforded greater flexibility in selecting course content most relevant to their day-to-day functions.

8. Trade Reporting

FSI appreciates that trade reporting plays an important role in furthering market transparency and investor protection. FSI members are subject to a number of trade reporting requirements, including, among others, the Consolidated Audit Trail (CAT), FINRA's Trade Reporting

Facility (TRF), and the Trade Reporting and Compliance Engine (TRACE). These reporting requirements are increasingly complex and, at times, redundant, and involve different regulatory bodies, such as the SEC, FINRA, and MSRB. Together, this has resulted in a complex web of requirements with a lack of clear regulatory guidance.

FSI asks that FINRA spearhead an initiative to review various trade reporting requirements in an effort to eliminate redundancy, lower costs, and increase efficiency. FSI further notes that the SEC has recently taken certain action with regard to CAT, providing an exemption from the requirement to report certain personally identifiable information for natural persons.[24] Further, in a recent speech, SEC Chairman Paul Atkins expressed concerns about the cost of CAT, noting that it has risen to nearly $250 million per year.[25] All this together signals an opportunity for FINRA to use its rule modernization initiative to engage in common-sense trade reporting reform.

Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with FINRA on this and other important regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at 202-803-6061.

Respectfully submitted,

David T. Bellaire
Executive Vice President & General Counsel

[24] See Order Granting Exemptive Relief, Pursuant to Section 36(a)(1) and Rule 608(e) of the Securities Exchange Act of 1934, from Certain Provisions of Section 6.4(d)(ii)(C) and Appendix D, Sections 9.1, 9.2 and 9.4 of the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 34-102386 (Feb. 10. 2025), available here.

[25] See, Chairman Paul S. Atkins, *Prepared Remarks Before SEC Speaks* (May 19, 2025), available here.