ADISA™
ALTERNATIVE & DIRECT INVESTMENT SECURITIES ASSOCIATION
Education ▲ Networking ▲ Advocacy

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VIA E-MAIL (pubcom@finra.org)

June 10, 2025

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

Re: FINRA Regulatory Notice 25-04

Dear Ms. Mitchell:

On behalf of the Alternative & Direct Investment Securities Association ("**ADISA**")[1], we are submitting this comment letter regarding the request for public comment set forth in Regulatory Notice 25-04 (the "**Notice**"). The Notice contains a broad request for comments on ways to modernize FINRA rules, interpretations and guidance. ADISA members include retail broker-dealers, managing broker-dealers (collectively "**BDs**"), and registered persons.

Given the importance of the issues raised in the Notice to BDs and other participants in the securities industry who are ADISA members, ADISA surveyed its BD and registered person members on issues that they are grappling with or otherwise running into, and the results of that survey are reflected in the comments below. Some of the issues are relatively complex and we have tried to keep our comments succinct and focused; we would be glad to provide more and/or deeper analyses of the points made herein to the extent that FINRA staff would find that helpful. ADISA appreciates the opportunity to provide comments on behalf of its members and wants to ensure that its input is provided in the most constructive manner possible.

1. ***Rule 2210 - Communication with the Public.***
   a. ***"First Touch" Communications with Potential New Clients.***

      ADISA requests that FINRA allow streamlined disclosure for "first touch" communications with potential new clients, with full Reg BI obligations to apply after a relationship is established.

BDs utilize many forms of communications to make potential new clients aware of the BD's services – whether it be television, radio, print, or social media using video or print. The purpose of these

[1] ADISA (Alternative & Direct Investment Securities Association) is the nation's largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of $200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501(c)(6)), registered to lobby, and also has a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

communications is to provide the BD the opportunity to start a conversation with a potential new client, providing information about the services provided and not specific products (a "first touch" communication). However, Rule 2210 and its associated interpretation and guidance requires so much information be included in all types of communications, making what is meant to be a "first touch" communication cumbersome in today's world of limited attention span when all the BD is looking for in an inbound communication from a potential new client. With the implementation of the heightened best interest standard found in SEC's Regulation Best Interest ("**Reg BI**")[2], including the associated disclosure and care obligations, a communication may prompt a potential new client to reach out to a BD or registered person, but that is only the beginning of establishing a relationship between an investor and the BD/registered person. When these communications are designed to be the "first touch" with a potential new client, they become largely irrelevant once the relationship between the BD/registered person and the client is established. Given the obligations required to be fulfilled by a BD or registered person pursuant to Reg BI, respondents to the ADISA survey request a relaxed disclosure standard for such "first touch" communications to enable the communications to be more quickly digested by viewers, after which the BD will communicate to the client the information and considerations required by Reg BI.

b. Use of Investment Objectives in Communications.

ADISA requests that FINRA permit BDs to communicate investment objectives of products to potential investors, ensuring full disclosure, level competition with issuers, and the protections of Reg BI.

The prohibition against providing information regarding investment objectives of an investment product is withholding material information from investors and is counter to providing investors with full disclosure regarding an investment. Allowing communications to include the disclosure of investment objectives, together with underlying assumptions, allows investors to make a complete analysis of the investment, including potential risks and rewards, and ultimately make a more informed investment decision.

BDs are not on a level playing field with issuers who sell directly to the public. Issuers who sell directly to the public are not subject to the same disclosure standards as BDs. Investors who invest directly with an issuer are not receiving the benefit of working with a regulated entity with the duties and obligations of Reg BI. Allowing the BD to communicate the investment objectives of an offering with potential investors would place the BD on a level playing field with issuer who sells directly to investors, help drive additional business to the BDs and provide the investors with the protections of Reg BI.

2. Rule 3110.19 – Residential Supervisory Location.

ADISA recommends that FINRA permit new principals with prior supervisory experience to qualify for a Residential Supervisory Location in their first year, supporting smaller BDs.

Rule 3110.19 sets forth the criteria for allowing the designation of a Residential Supervisory Location ("**RSL**"). Within this rule, subsection (c) sets forth circumstances under which a location may be ineligible to be designated as an RSL, including *"(c)(1) is a designated supervisor who has less than one year of direct supervisory experience with the member, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser*." In the current environment of continued remote

[2] Regulation Best Interest: The Broker-Dealer Standard of Conduct. Release No. 34-86031. Adopting Release: Regulation Best Interest: The Broker-Dealer Standard of Conduct.

working post-Covid and the challenge of finding and retaining qualified talent, specifically supervisory talent, this restriction creates significant hardship on BDs, particularly smaller BDs, in attracting and retaining the most talented people. It would be very helpful to allow new principals/series 24 principals to have an RSL within the first year of being hired for supervisory duties with a BD if they have engaged in similar supervisory duties in prior employment situations.

3. ***Rule 3270 - Outside Business Activities of Registered Persons.***

   ADISA recommends that FINRA exempt non-financial or non-securities related outside business activities from Form U4 disclosure and approval requirements to avoid unnecessary client confusion and administrative burden.

Rule 3270 requires a registered person to report any activities for which the registered person has a reasonable expectation of receiving compensation, and the approval of such activity by that person's BD (Item 13 of the Form U4). With the rise of registered persons taking on additional non-investment or non-security based "side gigs," the registered person should not have to go through this process with activities which are clearly non-financial or non-security based outside business activities (i.e., a server at a restaurant, an UBER/Lyft driver, a Walmart associate, etc.). In the event FINRA determines that the process of having the BD review and approve all outside business activities (regardless of type of activity) must stay in place, such non-financial or non-security based outside business activities should not be required to be disclosed on the registered person's Form U4. Disclosure of non-financial or non-security based outside business activities are irrelevant to such person's client facing recommendations and could be interpreted by a client as a need for supplemental income because the person is not sufficiently successful to make a living as a registered person.

4. ***Form U4 Disclosures (Item 14 of the Form U4).***

   ADISA requests that FINRA clarify online BrokerCheck disclosures to avoid duplication and confusion for clients.

FINRA requires disclosure of certain types of information, including certain criminal, regulatory actions, civil judicial, customer complaint/arbitration/civil litigation, termination, and financial disclosures, as well as others. Some respondents to ADISA's survey stated that double disclosure (one by FINRA and one by the firm or associated person) creates confusion with clients, making it look like there are more disclosures than there actually are. ADISA proposes an update to the BrokerCheck information provided to the public in order to streamline how these disclosures appear and to make clear that if a single disclosure event has two entries (one by FINRA and one by the firm or associated person), it is presented in a way that it is clear that both entries are associated with a single disclosure event.

5. ***SEC Rule 506(b) Offerings.***

   ADISA requests that FINRA update its interpretation of "substantive pre-existing relationship" to allow BDs to recommend evergreen private placements to newer clients, ensuring greater investor choice and compliance with Reg BI.

ADISA received the most comments on FINRA's interpretation of the "substantive pre-existing relationship" before allowing client participation in private placements. A substantive pre-existing relationship is not required by SEC Rule 506(b) but instead has been noted by the SEC that if such a relationship exists, the relationship is conclusive evidence that an investor was not attracted to an offering through general solicitation (a Rule 506(c) offering).

As alternative investments continue to expand, there are a greater number of issuers who are offering evergreen private offerings, sometimes providing for a continuous offering for 10 years or more. The requirement for a substantive pre-existing relationship between a BD and a client prior to the BD signing the selling agreement to sell such a continuous private offering, prevents any new client after the time of signing the selling agreement from making an investment in such offering, which prohibition could last for 10 years or more. This requirement serves to reduce investor choice and require substantial, complicated tracking by the BD and its associated persons with respect to when an offering was first available and when the investor became a client.

Preventing a BD from recommending an evergreen offering unnecessarily (1) limits the investment opportunities for newer clients and (2) constrains capital raising for the issuer. One of the benefits of being able to offer a continuous offering is that the BD and clients have operating and financial information regarding the investment's performance and the associated potential risks and rewards. Additionally, allowing new clients to participate in such offerings provides an opportunity for the BD to choose from a larger pool of investment opportunities to meet the best interest of the newer client in the same way as an established client. Making these investments unavailable to newer clients could conflict with Reg BI in the event that the 506(b) offering is in the best interest of the newer client, but unavailable to that client because of the restrictions of the "substantive pre-existing relationship" requirement.

ADISA requests that FINRA update the interpretation of "substantive pre-existing relationship" to reduce these negative, unintended consequences to newer BD clients.

6. Rule 3130 Annual Certification of Compliance and Supervisory Process for Smaller Broker Dealers.

ADISA urges FINRA to issue guidance clarifying that, for smaller broker-dealers, an in-person or formal meeting with the CCO is not required as part of the CEO certification process.

Rule 3130 sets forth the requirements that the Chief Executive Officer of a BD certify annually "*that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes*."

Often within smaller BDs (by headcount), the CEO and the CCO are the same individual. Requiring the CEO and CCO to meet within the preceding 12 months of the CEO certification simply does not make sense in these situations. ADISA asks for guidance for smaller BDs that an in-person or formal meeting does not need to occur in connection with the CEO certification process.

ADISA appreciates the opportunity to provide input. We would be happy to discuss our concerns further and to continue to assist FINRA further in modernizing its rules, interpretations and guidance.

Sincerely,

John H. Grady
President

cc: Drafting Committee: Deborah S. Froling and Catherine Bowman, Co-Chairs ADISA Legislative & Regulatory Committee; John Grady.