



**american securities association**

*America's Voice for Main Street's Investors*

June 18, 2025

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street NW  
Washington, DC 20006

***Re: Request for Comment on Modernizing FINRA Rules to Facilitate Capital Formation  
(Regulatory Notice 25-06)***

Dear Ms. Mitchell,

The American Securities Association<sup>1</sup> (ASA) appreciates the opportunity to provide comments in response to FINRA's Regulatory Notice 25-06, which seeks feedback on modernizing rules, guidance, and processes to facilitate capital formation and reduce unnecessary regulatory burdens. We support FINRA's efforts to update its regulatory framework to align with the evolving needs of capital markets<sup>2</sup> and investor protection.

**I. General Comments.**

The ASA has long supported initiatives that enhance capital formation for businesses of all sizes. We believe a balanced approach to regulation will foster economic growth, reduce barriers for businesses seeking access to public and private capital markets, and expand opportunities for investors. Below are specific recommendations on several areas outlined in the Notice.

**II. Research Rules.**

FINRA's request for input on whether its research rules are appropriately tailored is timely given ongoing changes in the research business and technological advancements. We offer the following recommendations:

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<sup>1</sup> ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

<sup>2</sup> Letter from the American Securities Association to the Securities and Exchange Commission's 44th Annual Small Business Forum, dated April 10, 2025, available here: [https://a23bc45c-4554-4d0e-a03d-124f54b031fc.usrfiles.com/ugd/a23bc4\\_73df40a7c163488a96b913e29a375dc5.pdf](https://a23bc45c-4554-4d0e-a03d-124f54b031fc.usrfiles.com/ugd/a23bc4_73df40a7c163488a96b913e29a375dc5.pdf); and Letter from the American Securities Association to the House Financial Services Committee dated April 31, 2025, in response to the Request for Feedback on Legislative Proposals to Increase Investor Access and Facilitate Capital Formation, available here: [https://a23bc45c-4554-4d0e-a03d-124f54b031fc.usrfiles.com/ugd/a23bc4\\_7917b0c4ed8c436f9296dee8e49689dd.pdf](https://a23bc45c-4554-4d0e-a03d-124f54b031fc.usrfiles.com/ugd/a23bc4_7917b0c4ed8c436f9296dee8e49689dd.pdf).



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1. Discretionary managed accounts. The current restrictions in Rule 2241 that effectively prevent analysts from owning or trading securities of companies they cover in “Research analyst accounts” (as defined in Rule 2241) that are managed on a fully discretionary basis by third-party managers are unnecessary and do not enhance investor protection.

FINRA should amend Rule 2241 to exempt “Research analyst accounts” that are managed by a third party on a fully discretionary basis (with no ability on the part of the analyst to direct or influence investment decisions in the account) from the inconsistent trading restrictions set forth in subparagraph (b)(2)(j)(ii) and the disclosure requirements set forth in subparagraph (c)(4)(A) of the rule.

2. Market Maker Disclosure. The requirement to disclose market-making activities has become outdated in light of modern trading practices, as market-making no longer presents the significant conflicts of interest it once did. Maintaining this disclosure obligation imposes compliance burdens that do not provide meaningful benefits to investors or the public. We therefore recommend eliminating the market-making disclosure requirement to better reflect current market realities.
3. Remote Work Flexibility for Research Analysts. We support continued flexibility for research analysts who work remotely. But requiring analysts to register their home or remote workspace as a branch office is unnecessary and burdensome. Given the evolving nature of the workplace and advancements in technology, we believe that remote work can be effectively managed under existing supervisory frameworks. Accordingly, we encourage FINRA to maintain remote work flexibility for research analysts, and reconsider the need for a specific exemption, as current oversight mechanisms are sufficient to ensure compliance and maintain investor protection.

### **III. Modernize FINRA Research Analyst Communication Rules During the IPO Process.**

ASA urges FINRA to revisit the current framework governing research analyst communications with private companies contemplating an IPO. As presently structured, the FINRA Research Rules-particularly as interpreted in the wake of the Toys “R” Us matter-impose a vague and restrictive “solicitation period” that creates significant uncertainty for both research analysts and issuers.

The definition of the solicitation period, which begins when an issuer makes its intent to pursue an IPO known and ends upon the bona fide awarding of mandates, is ambiguous and may span months or even years, depending on a company’s timeline.





There is consensus about the Toys “R” Us enforcement case, which has created ambiguities in the FINRA framework governing research analyst communications during the IPO process. Specifically, this has resulted in uncertainty over the “solicitation period”, which continues to complicate how and when analysts and issuers can interact.

For example, would it be permissible for bankers to communicate to IPO candidates the investor and market analysis, as well as the industry and company opinions of research analysts in preparation for an IPO? Management at prospective IPO companies prefer to interact directly with research analysts. While bankers can summarize the views of research analysts, analysts themselves typically possess a more nuanced and sophisticated understanding of the broader industry and the specific companies within it than bankers can effectively convey second hand.

Further, bankers may not have sufficient insight into how their research counterparts assess the industry or differentiate among companies to accurately communicate those views. This disconnect can limit the value and accuracy of the information that IPO candidates receive, potentially impacting their preparedness and decision-making.

Given these considerations, ASA recommends that FINRA clarify the permissible boundaries of research analyst communications throughout the IPO process. Adopting a more principles-based approach could provide greater certainty and facilitate more direct, informed interactions between analysts and prospective issuers—without compromising regulatory safeguards or the integrity of the research function. Additionally, affirmatively confirming the permissibility of certain practices would help ensure firms operate within the intended regulatory framework and avoid inadvertent violations.

#### **IV. Research Rules and JOBS Act Alignment.**

Section 105(b) of the JOBS Act explicitly permits research analysts to participate in communications with management of emerging growth companies (EGCs) during IPO processes, even when investment banking personnel are present<sup>3</sup>. Unfortunately, FINRA’s current rules and guidance—including FINRA Rule 2241,<sup>4</sup> prohibit research analysts from “soliciting investment banking business”. This rule creates ambiguity about permissible analyst activities during these communications. We urge FINRA to revise its current guidance and rules that are in direct conflict with the language of JOBS Act and make changes to its policies to align them with governing securities law.

<sup>3</sup> Jumpstart Our Business Startups Act Frequently Asked Questions About Research Analysts and Underwriters, SEC Division of Trading and Markets, August 22, 2012, available here: <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions-6>.

<sup>4</sup> Regulatory Notice 12-49: SEC Approves Amendments to NASD Rule 2711 and Incorporated NYSE Rule 472 to Conform to JOBS Act Requirements, Published Date: November 01, 2012, Effective Dates: April 5, 2012, and October 11, 2012, available here: <https://www.finra.org/rules-guidance/notices/12-49>.





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**V. Economic Impacts and Effectiveness.**

We believe FINRA should conduct a comprehensive economic impact and cost-benefit analysis on all of its rules before submitting them to the SEC. We also believe that Congress should subject FINRA to the Administrative Procedure Act<sup>5</sup> and all of its conditions. But until it does so, FINRA should voluntarily adopt a policy to all reasonable steps to conform its regulatory actions to the APA.

**VI. Conclusion.**

The ASA appreciates FINRA engaging stakeholders on these important issues and we look forward to working with you to make certain these policy suggestions are enacted.

Sincerely,

*Christopher A. Iacovella*

Christopher A. Iacovella

President & CEO

American Securities Association

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<sup>5</sup> 5 U.S.C. §§ 551–559, 701–706



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