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July 14, 2025

Via FINRA Website

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 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:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the "Committee"),[1] in response to FINRA Regulatory Notice 25-07, *FINRA Requests Comment on Modernizing FINRA Rules, Guidance, and Processes for the Organization and Operation of Member Workplaces* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 14, 2025.[2] The Notice solicits comment on how FINRA can further 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.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to this Notice, and supports FINRA's focus on modernizing its rules, guidance, and processes to reflect modern business practices and technologies employed by member firms to better serve markets and investors. Committee members have adopted technologies and workplace practices that make the application of certain FINRA rules and requirements duplicative, burdensome, impractical, and inefficient. In this letter, the Committee focuses on seven (7) topics that it believes FINRA should prioritize as part of its modern workplace review:

- Modernizing FINRA Rule 3110's (Supervision) office definitions to reflect modern workplace policies and real-time supervision practices

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[1] The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 32 member companies represent approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over four decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

[2] *See*, e.g., FINRA Regulatory Notice 25-07, FINRA Requests Comment on Modernizing FINRA Rules, Guidance, and Processes for the Organization and Operation of Member Workplaces (April 14, 2025), available here.

- Permitting the payment of compensation to registered representatives' personal services entities ("PSEs")
- Adopting an electronic delivery framework that reflects technological and societal developments since the mid-1990s
- Easing burdens on transferring customer accounts by negative consent
- Providing clear guidance on recordkeeping obligations for content generated by artificial intelligence ("AI")
- Expanding FINRA Rule 2165 (Financial Exploitation of Specified Adults) to further protect customers from financial exploitation
- Modernizing FINRA's fingerprinting process

1. Branch Offices and Hybrid Work

Office Classifications and Inspection Requirements. FINRA Rule 3110 (Supervision) imposes prescriptive inspection cycles based on whether a particular 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 the current version of the OSJ definition)[3] and early 2000s (for the branch office definition)[4] – a time when broker-dealer personnel almost exclusively operated out of brick-and-mortar office locations and regularly handled "paper" books and records. Times have changed. The advent of hybrid work arrangements and the proliferation of technology that allows for electronic books and records and real-time supervision have rendered Rule 3110's office classifications, and their related inspection cycles, outdated, inefficient, and largely ineffective.

The Committee believes that wholesale changes should be made to Rule 3110's office classifications and inspection requirements to bring them in line with modern business practices. Rule 3110 requires a broker-dealer to register a location as an OSJ if certain functions, like the final approval of retail communications or new accounts, are performed there. These functions are no longer carried out as they were in the 1980s, when they were included as part of the OSJ definition. Today, the review of retail communications and the acceptance of new accounts (along with nearly every other supervisory function performed by personnel of a broker-dealer) are performed electronically. The idea that a location must be registered as an OSJ, and thus be subject to an annual inspection requirement, simply because a person utilizes their computer at that location to electronically approve retail communications or new accounts, is illogical and serves no investor protection function.

FINRA's prescriptive approach with regard to office classifications and inspections, while a sensible approach years ago, has become cumbersome and a burden on firms when compared to the risk-based approach that it adopted in the Residential Supervisory Location ("RSL") and

[3] *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).

[4] *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.

Remote Inspections Pilot Program rulemakings,[5] 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. FINRA's approach also differs significantly from requirements applicable to investment advisers under the Investment Advisers Act of 1940, as amended (the "Advisers Act").[6] The Advisers Act, notably, does not require an investment adviser to "classify" particular locations where advisory business is conducted according to arcane and subjective criteria and instead, adopts a principles-based approach that allows an adviser to build a supervisory program that makes sense in the context of its business model.

The Committee understands that any changes to Rule 3110, particularly with regard to office classifications, may be difficult considering that many concepts in Rule 3110 are derived from aspects of the federal securities laws and are interwoven into state securities laws.[7] The Committee believes that FINRA should adopt a "top-down," deliberate approach to any rulemaking with substantial input and engagement from the industry (such as through roundtables, regulatory notices with requests for comment, etc.). Rather than making changes around the edges, a comprehensive approach would allow FINRA to develop a reasonable, well-constructed rule that works with modern business practices.

***Residential Supervisory Location*.** The Committee 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, the Committee advocates for two changes that would provide further flexibility in the scope of locations that could be classified as an RSL.

First, the Committee does not believe that there is any meaningful investor protection benefit to include as a criteria for RSL qualification that "only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location."[8] Many times, associated persons will need to reside with unrelated roommates and/or partners to afford the rising cost of housing. Further, associated persons often meet other associated persons through their employment who eventually become roommates and/or partners. Under the current criteria, the residential location of two unrelated roommates and/or partners (who are not married and not designated as domestic partners) would not be eligible for designation as an RSL.

Second, there is no meaningful investor protection benefit to include as a disqualifying condition for RSL qualification a location at which "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." As the Committee noted in detail through the RSL rulemaking process, this language has a substantial chilling effect on the transfer of experienced supervisory personnel from one broker-dealer to another broker-dealer.[9] Furthermore, this RSL disqualifying condition places an

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[5] *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.

[6] Rule 206(4)-7 under the Advisers Act requires a registered investment adviser to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation, by [the adviser] and [its] supervised persons, of the [Advisers Act] and the rules that the Commission has adopted under the [Advisers Act]."

[7] By way of example, the Committee 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 Act"). *See* NTM 05-67. FINRA's definition of "branch office" has been incorporated, either directly or by reference, in many states' blue sky laws.

[8] SM.19(a)(1) to FINRA Rule 3110.

unnecessary burden on Firms' compliance and licensing departments as it often requires the manual tracking of a newly designated supervisor's tenure until the one-year of direct supervisory experience mark is reached. Member firms should have the ability to independently assess a newly designated supervisor's experience and consider an RSL without this condition.

Form BR. 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."[10] Many Committee 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. The Committee 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 cohabitating individuals who work for different financial institutions.

2. Payment of Compensation to PSEs

The Committee appreciates FINRA's focus on facilitating arrangements through which registered representatives receive compensation for their services through PSEs. Registered representatives, particularly those that associate with broker-dealers as independent contractors, often desire to utilize PSEs to engage in non-broker-dealer activities (e.g., insurance and/or investment advisory business), undertake proper tax planning, create a viable succession plan, and provide essential employee benefits to their staff. These types of compensation arrangements are generally permitted with regard to advisory compensation, but are subject to uncertainty with regard to brokerage compensation 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 and other financial services/insurance compensation through a PSE but require that brokerage compensation 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.[11]

While the Notice cites to a recent SEC statement that transaction-based compensation "is not *in itself* determinative of broker status,"[12] SEC staff have generally taken the position through no-action letters that the receipt of transaction-based compensation is a key factor in determining whether a person or entity is acting as a broker-dealer. Citing to one of these no-action letters, the SEC's Guide to Broker-Dealer Registration (which is available on the SEC's website) explicitly notes that:

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[9] The Committee filed comment letters related to the RSL rulemaking covering the points raised in this letter on August 23, 2022 and April 27, 2023.

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

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

[12] *See* the Notice at pg. 10 (emphasis in original) (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)).

> 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.[13]

FINRA Rule 2040 also serves as a barrier to the payment of transaction-based compensation to a PSE since it prohibits member firms from paying transaction-based compensation to non-registered persons.

The Committee believes that clear guidance which allows the payment of transaction-based compensation 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 facilitate the promotion and success of many small businesses run by independent contractor registered representatives. Along these lines, the Committee has several suggestions of steps that FINRA should take to facilitate these types of arrangements. First, FINRA should provide explicit guidance that the payment of transaction-based compensation to a non-registered PSE does not violate FINRA Rule 2040. Second, FINRA should request that the SEC withdraw certain no-action letters that create uncertainty around whether a PSE receiving transaction-based compensation, but not engaging in any other "broker-dealer activity," is required to register as a broker-dealer.[14] Third, FINRA should request that the SEC remove the above-quoted statement from its Guide to Broker-Dealer Registration and replace it with the language from the Notice that transaction-based compensation "is not *in itself* determinative of broker status."

3. Electronic Delivery

The Committee believes that FINRA should take steps to modernize its electronic delivery framework by taking into consideration technological and societal developments over the last three decades. The Committee 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. 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 is unnecessarily burdensome given the widespread use of the internet and has the unintended practical consequence of precluding the use of electronic delivery on a widespread and effective basis.

FINRA should work with the SEC to modernize its framework on electronic delivery. More specifically, the Committee would support a framework that would allow for a broker-dealer to default to electronic delivery so long as the broker-dealer discloses to customers that documents will be delivered electronically and provides customers with the opportunity to opt for paper delivery. While FINRA undertakes that effort with the SEC, the Committee believes that FINRA should independently take steps to modernize its electronic delivery guidance with regard to disclosure obligations imposed under FINRA rules. For example,

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[13] 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)).

[14] *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).

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

FINRA Rule 2231 (Customer Account Statements) governs customer account statements, requiring member firms to send quarterly statements to customers detailing their account activity, securities positions, and money balances. Supplementary Material .03 to Rule 2231 ("SM.03") provides 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." The Committee believes that FINRA should amend SM.03 to allow for a broker-dealer to default to electronic delivery, provided that the broker-dealer provides disclosure and an opportunity to opt out.

4. Negative Consent for Account Transfers

FINRA's rule modernization initiative presents an opportunity for FINRA to re-examine, and refresh, its 20-year-old guidance on broker-dealers' use of negative consent to effectuate the transfer of customer accounts. FINRA's framework was developed primarily through a series of Interpretive Letters, Regulatory Notices, and Office of the General Counsel statements from the early-mid 2000s. Under this guidance, the use of negative consent to transfer customer accounts is generally prohibited unless it falls within one the following narrow categories: (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;[16] (6) a member ending a certain business line (e.g., a firm ceasing to offer retail brokerage services);[17] (7) certain changes to the broker-dealer of record on a direct-held mutual fund or variable annuity;[18] (8) effecting the bulk transfer of employee equity compensation plan accounts;[19] and (9) assigning orphan accounts to an introducing broker-dealer on a clearing firm's platform.[20] For most transfers that fall outside these nine specific categories, broker-dealers are required to gain a customer's affirmative consent to an account transfer.

The Committee believes that the current framework for negative consent is unnecessarily limited and prescriptive and does not account for modern business practices and customer preferences. FINRA generally requires affirmative consent for account transfers because negative consent may result in a customer not having "sufficient time or information with which to decide whether to object to the transfer."[21] The Committee advocates for FINRA to adopt a principles-based framework that addresses this risk, while providing flexibility in the use of negative consent. The Committee believes that such a framework should focus on three key principles: (1) whether the customer account agreement between the broker-dealer and the customer allows the broker-dealer to transfer the customer's account by negative consent; (2) whether the broker-dealer has provided timely notice with the standard information required under a negative consent process to the customer of its intent to transfer an account by negative consent; and (3) whether the customer had a fair opportunity to reject the transfer. The Committee believes that such a framework would offer much-needed flexibility to broker-dealers, while not sacrificing any important investor protections.

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

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

[18] *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.

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

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

[21] *See* NTM 02-57 at pg. 564.

5. AI and Recordkeeping

The Committee appreciates FINRA's acknowledgment in the Notice that emerging communications technologies have raised "novel questions" about broker-dealers' ability to comply with Rule 17a-4(b)(4) under the Exchange Act and FINRA recordkeeping rules. Many Committee members utilize AI to increase efficiency and reduce the cost of certain functions. Committee members' use of AI includes, but is not limited to, customer service "chatbots," tools to facilitate back-office operations (e.g., locating information in the firm's policies and procedures), the generation of meeting transcriptions, and the summarization of large and complex documents and data sets and producing reports related to those documents and data sets.

FINRA's guidance regarding firms' recordkeeping obligations for AI-generated content emphasizes that FINRA's rules are technology-neutral.[22] These rules remain applicable, regardless of whether communications are created through the use of generative AI or otherwise. Given the rapid pace with which firms are adopting AI solutions to enhance their business, the Committee believe that FINRA should issue further guidance around the types of AI-generated outputs that are considered a "record" for the purposes of Rule 17a-4 and FINRA's recordkeeping rules.

6. Fraud

The Committee appreciates FINRA's dedication to strengthening protections for senior and vulnerable investors and providing broker-dealers with tools to help combat financial exploitation. Committee members particularly appreciate FINRA's adoption and subsequent amendments to Rule 2165 (Financial Exploitation of Specified Adults), which allows firms to place temporary holds on transactions and disbursements when they hold a reasonable belief of financial exploitation. The Committee believes that the application of Rule 2165 could be expanded in two important ways.

Extending The Temporary Hold Period. Rule 2165 currently allows a maximum total hold period of 55-business days. The Committee notes that there are a sizable percentage of cases of suspected financial exploitation that cannot be resolved within 55-business days. In 2020, FINRA developed an anonymous survey that was distributed to all member firms, with the purpose of allowing member firms to provide their views about the effectiveness of Rule 2165.[23] Through the survey, 59% of the respondents indicated that it took an average of 51-100 days to resolve a matter. Even with a 55-day hold period, firms are still often stuck in the unenviable position of determining whether to engage in a disbursement, or execute a securities transaction, prior to their ability to conclude an investigation and ensure that a customer has not been exploited.

The Committee further believes that, in conjunction with extending the hold period, FINRA should encourage the North American Securities Administrators Association ("NASAA") to amend their Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (the "Model Act")[24] to be consistent with Rule 2165. The Model Act, which has been adopted by most states, provides for a 25-day maximum hold period, which is

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[22] *See* e.g., FINRA Frequently Asked Questions About Advertising Regulation, FAQ B.4. Supervising Chatbot Communications and FAQ D.8. AI Created Communications (May 10, 2024), available here; 2025 FINRA Annual Regulatory Oversight Report (Jan. 28, 2025), available here; FINRA Regulatory Notice 24-09, FINRA Reminds Members of Regulatory Obligations When Using Generative Artificial Intelligence and Large Language Models (Jun. 27, 2024), available here.

[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.

[24] NASAA's Model Act can be found here.

inconsistent with Rule 2165 and requires broker-dealers to navigate a patchwork of requirements each time they encounter suspected financial exploitation.

Expanding the Scope of the Term "Specified Adults." FINRA Rule 2165 permits a broker-dealer to place a temporary hold on a securities transaction or disbursement from the account of a "specified adult" when the firm has a reasonable belief of financial exploitation. The term "specified adult" is defined to include "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 Committee members encounter situations where they suspect that one of their customers is being financially exploited, but that customer does not meet the definition of a "specified adult." In those situations, the firm is not able to take advantage of Rule 2165's safe harbor to place a hold on a suspicious transaction or disbursement. Given the overall rise in financial exploitation and the increasing sophistication of scams, the Committee believes that Rule 2165's safe harbor should be expanded to include any customer who a broker-dealer suspects is subject to financial exploitation.

7. Registration Process and Information

The Notice requests comment on whether aspects of FINRA's "registration process and systems and information collected" should be changed to address "modern technologies." The Committee supports the modernization of FINRA's fingerprinting processes, including the adoption of digital and remote methods for obtaining fingerprints. In modernizing its fingerprinting process, FINRA should align with state insurance regulators, who often have their own separate fingerprinting requirements and process. The Committee would also support the automation of statutory disqualification flagging and related notifications to improve the efficiency of onboarding new registered representatives.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: ______________________
Clifford Kirsch

BY: ______________________
Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS