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Submitted electronically through https://datacollection.fnrw.finra.org/?notice_ref=367851

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

Re: Supporting Modern Member Workplaces: Regulatory Notice 25-07

Dear Ms. Mitchell,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") on modernizing its rules, guidance, and processes for the organization and operation of member workplaces as described in Regulatory Notice 25-07 ("Regulatory Notice").[2]

Executive Summary

As FINRA undertakes a broad review of its rules to support modern member workplaces, we recommend that FINRA focus on the following areas:

1. Default to digital delivery for all regulatory communications.
2. Codify the remote inspection pilot.
3. Align FINRA's Communications with the Public Rule with the SEC Marketing Rule.
4. Provide further guidance on educational and financial literacy communications.
5. Clarify the communications retention requirement.
6. Update the "institutional investor" definition and the "member name" requirement.
7. Conduct a comprehensive review of FINRA's Options Communications Rule.
8. Amend FINRA's Supervision Rule to: (i) remove the one-year supervisory experience requirement, (ii) expand the primary resident requirement for alternative work locations, (iii) modernize the definition of "branch office" to account for hybrid work, and (iv) narrow the definition of "office supervisory jurisdiction."
9. Provide flexibility in the supervision of a permissively registered principal.
10. Update the Central Registration Depository.
11. Review all qualifications exams to streamline testing.

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[1] Fidelity is one of the world's leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and other financial products and services. We administer approximately $15 trillion in assets from over 50 million individual investors, 29,000 employer client firms, 16,000 wealth management firms and institutions, and 8.5 million clearing and custody accounts. https://www.fidelity.com/about-fidelity/our-company.

[2] *See* Financial Industry Regulatory Authority; Supporting Modern Member Workplaces, Regulatory Notice 25-07 (April 14, 2025), available at https://www.finra.org/sites/default/files/2025-04/Regulation-Notice-25-07.pdf.

1. Default to Digital Delivery for All Regulatory Communications

Fidelity has long advocated for digital delivery as the default delivery option for all investor communications.[3] Fidelity expressed this view in its response to FINRA's Regulatory Notice 25-04 and is pleased FINRA has sought additional feedback in this Regulatory Notice. We continue to urge FINRA to work closely with the Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board to modernize their delivery rules to make digital delivery the default method for delivery of all regulatory communications. Digital delivery is both more effective in providing notice and more efficient in terms of sustainability and resources. Any "modernization" efforts must begin with a move into the digital era.

2. Codify Remote Inspection Pilot

FINRA should make permanent and codify the remote inspection provisions authorized by the remote inspection pilot program in Rule 3110.18.[4] By instituting a pilot program for remote inspections, FINRA acknowledged that remote inspections of certain locations may be performed as effectively as in-person inspections. In the modern digital age, whether an associate is working at a home office or in a brick-and-mortar branch office, the systems used, and the supervisory structure remain the same. Further, any concern over higher risk activities or locations has been mitigated by Rule 3110.18 through the use of a risk assessment process, for both associates and locations, allowing firms to designate higher risk locations for in-person inspections.

3. Align FINRA Communications with the Public Rule with SEC Marketing Rule

Fidelity has previously commented on the disparity between FINRA Rule 2210 (the "FINRA Communications with the Public Rule") and SEC Rule 206(4)-1 (the "SEC Marketing

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[3] *See* Letter from Roberto Braceras, General Counsel, Fidelity Investments, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, *Rule Modernization* (March 12, 2025), available at https://www.finra.org/sites/default/files/NoticeComment/Fidelity%20Comment%20Letter%20-%20FINRA%20Rule%20Modernization.pdf; Letter from Robert Adams, Chief Operations Officer, National Financial Services LLC, to Vanessa Countryman, Secretary, SEC, *SEC Proposal Shortening the Securities Transaction Settlement Cycle* (April 11, 2022), available at https://www.sec.gov/comments/s7-05-22/s70522-20123235-279508.pdf; Letter from Fidelity Investments to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, *Retrospective Rule Review: Lessons from the COVID-19 Pandemic* (Feb. 16, 2021), available at https://www.finra.org/rules-guidance/notices/20-42#comments; Letter from Fidelity Investments, Charles Schwab, and BlackRock, to The Honorable Jay Clayton, Chairman, SEC (Sept. 8, 2020), available at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/about-fidelity/coalitionletter.pdf; Letter from Cynthia Lo Bessette, Chief Legal Officer, Fidelity Management & Research Company LLC, to Vanessa Countryman, Secretary, SEC, *SEC Proposal Tailored Shareholder Reports* (Jan. 4, 2021), available at https://www.sec.gov/comments/s7-09-20/s70920-8204333-227469.pdf; Letter from Jonathan Chiel, Executive Vice President and General Counsel, Fidelity Investments to Brent J. Fields, Secretary, SEC, *SEC Request for Comment on Fund Retail Investor Experience and Disclosure* (Oct. 31, 2018), available at https://www.sec.gov/comments/s7-12-18/s71218-4593694-176325.pdf.

[4] Per FINRA Rule 3110.18(a), the pilot will sunset on June 30, 2027, if FINRA does not take further action to codify remote inspections.

Rule").[5] We continue to recommend that FINRA align the FINRA Communications with the Public Rule with the SEC Marketing Rule to prevent customer confusion regarding communications distributed by broker-dealers and those distributed by investment advisors.

In the past, FINRA made efforts to allow member firms greater flexibility to use related performance and hypothetical index returns. However, this relief has been limited to institutional investors.[6] Conversely, the SEC Marketing Rule has no audience restrictions. Instead, the SEC relies on certain conditions and requirements to ensure the intended audience fully understands the complexity and limitations of this type of performance.

This current incongruity between SEC and FINRA standards creates confusion and inefficiency for both member firms and customers. Indeed, many firms are dually registered, and customers may have both broker-dealer and advisory relationships with the firm resulting in inconsistent communication experiences due to the needless conflicts in the rules. We urge FINRA to adopt the SEC Marketing Rule which leverages appropriate disclosure and usage requirements to ensure investor protection.

4. Provide Further Guidance on Educational and Financial Literacy Communications

FINRA has previously worked closely with member firms to provide helpful guidance on the use of social media.[7] This guidance has proven to be beneficial as customers and prospective investors increasingly look to social media for communications. Given the continued growth and popularity of social media to help communicate with and educate customers, we believe additional guidance from FINRA is needed related to educational and financial literacy communications.

In Regulatory Notice 17-18, FINRA noted that Rule 2210 does not apply to certain topics such as a job posting or the promotion of a charitable event and further clarified that Rule 2210 applies to communications related to the products or services of the firm. Many firms have since created programs that allow their employees to engage on social media with topics aligned with that guidance. However, the specific examples FINRA provided as types of communications not being related to the products and services of the firm were narrow in scope. Questions remain about how to treat communications explaining financial concepts designed to educate and inform.

We believe that additional guidance would be instrumental: FINRA should provide guidance that educational or financial wellness-based communications that do not promote a

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[5] *See* Letter from Alexander Gavis, Vice President & Associate General Counsel, FMR LLC, to Marcia E. Asquith, Secretary, FINRA, *Retrospective Rule Review on Communications with the Public* (April 8, 2014), available at https://www.finra.org/sites/default/files/NoticeComment/p519153.pdf.

[6] *See* Interpretive Letter to Edward P. Macdonald, Hartford Funds Distributors, LLC, *Provision of Related Performance Information to Institutional Investors* (May 12, 2015), available at https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-edward-p-macdonald-hartford-funds-distributors-llc.

[7] *See* FINRA Regulatory Notice 17-18, *Guidance on Social Networking Websites and Business Communications,* available at https://www.finra.org/rules-guidance/notices/17-18.

member firm's specific product or service are excluded from Rule 2210's requirements. Examples include public policy matters and general information about financial well-being, such as saving for retirement and the benefits of asset allocation or diversification. A principal element of these types of communications is that they are designed to educate and do not promote a specific product or service of the member firm. Non-promotional communications that mention a *type* of product or service the member firm may offer in the context of an educational or financial wellness communication should likewise be exempted from Rule 2210's requirements.[8]

FINRA also should provide guidance on the definition of a "communication." Today's technology allows for dynamic interactions where content may be changed or created in real time, such as a comment to a social media post, presenting uncertainty as to whether such content is a "communication." The unclear definition leads to the burden of retaining all interactions to ensure compliance or unnecessarily restricting the use of new and exciting technologies.

5. Clarify Communications Retention Requirement

SEC Rule 17a-4(b)(4) requires member firms to retain all copies of communications sent and received relating to their "business as such" for a period of not less than three years. The lack of guidance from both the SEC and FINRA regarding what constitutes "business as such," in conjunction with significant technology changes prompting new and novel ways for firms to interact with clients, has led to inconsistent interpretations and operational challenges across the industry. While facts and circumstances will always dictate whether a communication is related to a member firm's business, there is an opportunity for the SEC and FINRA to work together to provide principle-based guidance firms could leverage when analyzing whether a communication requires retention pursuant to Rule 17a-4.

Due to the lack of guidance, many firms require all communications to be retained. While this approach may mitigate the risk that a relevant communication is not retained, it results in unnecessary costs across the industry for collection and storage of excessive amounts of communications. Moreover, this overcollection of communications slows a member firm's ability to produce pertinent communications quickly and efficiently during exams.

6. Update "Institutional Investor" Definition and "Member Name" Requirement

a. Update Institutional Investor Definition

Fidelity recommends that FINRA amend the definition of "institutional investors" in Rule 2210(4). The rule defines institutional investors as employee benefit plans ("plan sponsors") with at least 100 participants. Fidelity continues to believe that the 100-participant

[8] An example of this may be concepts such as "The Benefits of Your 401k Match" or the "The differences between a traditional and Roth IRA." Collectively, these types of communications are designed to educate and inform and not market a product or service of the member firm.

threshold requirement lacks a compelling and meaningful basis and continues to urge FINRA to revise the rule to treat all plan sponsors the same given their fiduciary-like duties by removing the 100-participant requirement.[9]

All plan sponsors – regardless of the number of participants in the plan – have a fiduciary duty under the Employee Retirement Income Security Act of 1974 to choose and monitor the options offered under their retirement plans. This statutory responsibility requires these fiduciaries to have an in-depth understanding of investment concepts and of the products chosen as retirement plan options. Plan sponsors supplement their investment knowledge through regular contact with their investment providers and record keepers. Fidelity has not found there to be a measurable correlation between the level of sophistication of a plan sponsor and the number of employees. Further, a 100-participant standard is exceedingly difficult to administer in practice, as member firms must track the number of plan participants in each of their clients' plans to confirm that each plan meets the definition of institutional investor before institutional sales material is distributed.

b. Update Member Name Requirement

Under FINRA Rule 2210(d)(3), retail communications and correspondence of a member firm are required to prominently disclose the member's name as disclosed on the Uniform Application for Broker-Dealer Registration ("Form BD"). While FINRA currently permits the use of a commonly recognized name alongside the Form BD name, we question the investor protection offered by such a requirement given the Form BD name serves as a formality on a form that may not be familiar or relevant to the average investor. In contrast, brand names are more often recognized and trusted. We believe that there are opportunities for FINRA to allow firms to develop a reasonable approach to including a name more commonly associated with the firm in electronic communications, particularly social media communications. FINRA rules already require that member communications not be misleading. FINRA should consider guidance that allows firms to use brand names or other naming conventions that accurately denote the name associated with the firm or its offerings.

7. Conduct Comprehensive Review of FINRA Options Communications Rule

The last substantive review of Rule 2220 (governing communications related to options and options trading) took place over 15 years ago when digital communications were not as prevalent. As a result, Rule 2220 does not address the new ways in which member firms communicate and engage with customers and prospective customers through mobile apps and social media platforms. We recommend a full retrospective review of all its provisions and believe FINRA should adopt a principles-based approach for applying General Standards disclosures, requiring relevant disclosures only when applicable to the communication at issue.

Further, with respect to Rule 2220, we specifically recommend: (i) eliminating the requirement to pre-file communications at least ten calendar days prior to first use when used

[9] *Supra* note 5, available at https://www.finra.org/sites/default/files/NoticeComment/p519153.pdf.

before delivery of the Options Disclosure Document ("ODD"); (ii) if, based on the content of the communication, the ODD is required to be delivered, providing flexibility on the use of a layered disclosure approach to comply; and (iii) clarifying the definition of "standardized option" that triggers providing the ODD.[10]

8. Amend FINRA Rule 3110

a. Amend FINRA Rule 3110.19 Residential Supervisory Location ("RSL Rule") to Remove One-Year Supervisory Experience Requirement

Fidelity has a long history of supporting hybrid and remote working[11] and believes that there are still opportunities to support the modern workplace given continued advancements in technology and Fidelity's implementation of FINRA Rules 3110.18 and 3110.19.

The RSL Rule requirement that a supervisor has at least one year of supervisory experience with the member firm prior to their home being designated as an RSL is unduly burdensome, provides no added customer protection or benefit, and should be removed. Effectively, this eligibility criteria requires that the supervisor's home first be registered as an Office of Supervisory Jurisdiction ("OSJ") for one year before the location can be designated as an RSL. However, in practice, regardless of whether a supervisor is working at a home that is registered as an OSJ or designated as an RSL, the supervisor is performing the same functions under the same surveillance systems of the member firm. Requiring one year of experience prior to designating a supervisor's home as an RSL does not provide any additional investor protections, nor would it expose additional risks if the requirement were removed.

Additionally, the one-year supervision requirement applies broadly to all supervisors, regardless of industry tenure. The RSL Rule is not appropriately tailored to account for longstanding supervisors who move to a new member firm. A veteran supervisor should not be penalized for moving to a new member firm and be required to effectively start over.

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[10] For example, is a general mention of options trading or certain trading capabilities a communication that requires the ODD? We note that providing a customer with the ODD, including updates, is already required under FINRA Rule 2360, before the customer is approved for options trading.

[11] See Letters from Fidelity Investments to Vanessa Countryman, Secretary, SEC, *Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)* (August 29, 2023), available at https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007-252079-579362.pdf; *Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110* (August 1, 2023), available at https://www.sec.gov/comments/sr-finra-2023-006/srfinra2023006-238819-499662.pdf; *Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)* (May 25, 2023), available at https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007-194879-387082.pdf; *Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110* (April 27, 2023), available at https://www.sec.gov/comments/sr-finra-2023-006/srfinra2023006-20165205-334509.pdf; *Notice and Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend Relief to Allow Remote Inspections under FINRA Rule 3110* (February 16, 2022), available at https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001-20116307-267950.pdf.

Further, an RSL is subject to a three-year inspection cycle whereas an OSJ is subject to annual inspections. If FINRA believes that a new supervisor's home office should be inspected during the supervisor's first year of supervisory experience, then we see no reason why the location could not be designated as an RSL and inspected during that initial first year. Requiring that a new supervisor's RSL be inspected during the first year of designation negates the need for the one year waiting period that triggers an OSJ registration.

Lastly, if the supervisor limits activities conducted at the location to only performing supervision, does not perform any other functions that would require registration as a branch office or OSJ, and does not meet with customers (as would be required in order to qualify for the RSL designation), the home office would not otherwise hold itself out to the public as a brick-and-mortar office location. Whether registered as an OSJ or designated as an RSL, the supervisor is performing the same limited function—supervision—and using the same firm technology, which is electronically maintained and monitored. This firm-approved technology provides sufficient oversight, documentation, and surveillance of the supervisor's activities, regardless of how the supervisor's home office is classified.

b. Expand Primary Residence Requirement for Alternative Working Locations

While the RSL Rule provides the flexibility for a supervisor to designate more than one location as a "private residence,"[12] Rule 3110's branch office definition does not provide the same flexibility for non-supervisory associates that may work from home and at an additional remote location, and only provides an exclusion to the definition of a branch office for an associate's "primary residence."[13] As such, any non-supervisory associate that has a second residence may not work at that location more than twenty-nine (29) days in the calendar year to avoid registration as a branch office.[14] The disparity between the RSL's "private residence" and branch office's "primary residence" creates an unreasonable burden on firms to track and supervise non-supervisory associates working from a second residence. In addition, it fails to provide flexibility to associates who do not perform supervision. FINRA should harmonize the branch office exception with the RSL Rule, in both instances as a private residence.

c. Modernize Definition of "Branch Office" to Account for Hybrid Work and Alternative Living Arrangements

FINRA's definition of a "branch office" under Rule 3110 should be modernized to account for an increasingly mobile workforce that has embraced hybrid work, as well as alternative family living arrangements. Currently, a space is designated as a "branch office" when one or more associated persons of a member firm work at the same location, unless the associated persons are immediate family.[15] However, the definition does not take into account

[12] *See* Frequently Asked Questions about Residential Supervisory Locations (RSLs), Q/A 4, available at https://www.finra.org/rules-guidance/key-topics/residential-supervisory-locations/faq.

[13] *See* FINRA Rule 3110(f)(2)(A)(ii).

[14] *See* FINRA Rule 3110(f)(2)(A)(iii).

[15] *See* FINRA Rule 3110(f)(2)(A)(ii)(a).

alternative living arrangements that have developed over the years, such as associated persons living as roommates or unmarried couples.

These living situations would fall under the definition of a "branch office" and therefore require designation, initiating costly registration, annual exams, and disclosure on BrokerCheck. We believe that these arrangements are no different than if the associates were immediate family (which would not trigger the branch office definition). We urge FINRA to modernize its dated definition of a "branch office" under Rule 3110, which was created prior to hybrid work, to allow additional flexibility for these alternative living arrangements.

Moreover, FINRA's definition of a "branch office" should be modernized to eliminate unnecessary burdens associated with Rule 3110(f)(2)(B), which requires that a location be designated a "branch office" if supervisory activities are being performed.[16] Subsection (f)(2)(B) creates an inconsistency, in which the supervisory activity contemplated is recognized as permissible activity from locations that otherwise meet the criteria for an RSL. We urge FINRA to consider removing subsection (f)(2)(B) entirely from Rule 3110 to remove the inconsistent approach that requires a location to be deemed a "branch office" where any supervision is taking place and allow the flexibility to designate these locations as RSLs. Alternatively, FINRA could clarify subsection (f)(2)(B) to limit its scope to supervision of activities of registered persons only (rather than all associated persons) or could track the definition of "branch office" by referring to supervision of customer facing sales activities.

d. Narrow Definition of OSJ under FINRA Rule 3110(f)(1)(G)

As with the definition of "branch office," the definition of OSJ under Rule 3110(f)(1)(G) seems to conflict with FINRA's efforts to provide regulatory flexibility necessary to address the hybrid work environment, by imposing unnecessary burdens on member firms without measurable investor protection. We encourage FINRA to consider narrowing the scope of Rule 3110(f)(1)(G) to align with the functions identified in Rule 3110(f)(1)(A) - (F) as triggering OSJ designation. This change would remove the overly broad language that requires OSJ designation in instances in which the activities being performed may not require it. This change would also further support FINRA's stated intent to modernize without jeopardizing investor protection.

9. Provide Flexibility in the Supervision of a Permissively Registered Principal

Fidelity recommends that FINRA revisit Rule 1210.02 regarding the supervision of permissively registered representatives. Specifically, while the rule allows a permissively registered *associate* to be supervised by a registered representative or registered principal, a permissively registered *principal* must be supervised by a registered principal.[17] Compliance, in certain instances, becomes logistically burdensome when a registered principal works in an area

[16] *See* FINRA Rule 3110(f)(2)(B) ("Notwithstanding the exclusions in subparagraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.").

[17] *See* FINRA Rule 1210.02.

of business that does not require registration and therefore becomes permissively registered. To allow the registered principal to remain permissively registered, the principal's manager is required to obtain a principal license registration, even when it would not otherwise be required for the role. There is an opportunity for FINRA to reevaluate this requirement and to promote flexibility in the registrations that are required to supervise a permissively registered principal by allowing permissively registered principals to be supervised by any registered representative or registered principal.

10. Update the Central Registration Depository ("CRD")

FINRA should conduct a review of the CRD and update the functionality based on recent FINRA rule changes. For example, CRD does not allow firms to list an RSL as the "supervised from" location for an associate. Effectively, this requires firms to "tree-up" the "supervised from" location to align the supervision with a branch office location. In addition, if an RSL is not listed on the Uniform Branch Office Registration Form ("Form BR") for a particular branch office, the individual residing at said RSL cannot be named as the supervisor of a non-OSJ branch office which leads CRD to erroneously create a "deficiency" for the location. The CRD should be updated to reflect the RSL as an acceptable location from which to supervise.

11. Review all Qualifications Exams to Streamline Testing

With respect to qualification exams, FINRA should review the various principal licenses and determine if all exams must remain independent or if there are certain instances in which a combination of existing exams is sufficient. While there are potential added benefits to separate exams for different asset classes like options and municipal securities, the benefit is less clear when requiring separate exams for the Series 9/10 license and Series 24 license. We welcome further clarity on instances in which a Series 9/10 license is required over a Series 24 license. Further, FINRA should review whether a shorter Series 9/10 "top-off" exam is appropriate for an associate who already holds a Series 24 license and vice versa, and only needs to demonstrate an understanding of a specific topic, such as advertising. As a general matter, we encourage FINRA to reconsider principal exam content in a cumulative manner: one exam should build upon another. Separate, holistic exams should not be required in all instances.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts that FINRA undertakes, or respond to questions FINRA may have about our comments.

Sincerely,

cc: Robert Cook, President & CEO, FINRA
Robert Colby, Chief Legal Officer, FINRA

The Honorable Paul S. Atkins, Chairman, SEC
The Honorable Mark T. Uyeda, Commissioner, SEC
The Honorable Hester M. Peirce, Commissioner, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC

Jamie Selway, Director, Division of Trading and Markets, SEC