american securities association
America's Voice for Main Street's Investors

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Re: Regulatory Notice 25-04 on a Broad Review of FINRA's Regulatory Requirements

Dear Mr. Shaikun and Ms. Seidel,

The American Securities Association[1] appreciates the opportunity to provide comments on FINRA's initiative to modernize its regulatory framework[2] for member firms and associated persons. As a stakeholder committed to fostering investor protection and market integrity, we support FINRA's focus on adapting to the evolving technological and operational landscape.

In light of this modernization effort, we would like to highlight several areas for consideration that could enhance the effectiveness of FINRA's regulatory approach while addressing challenges faced by member firms.

Cybersecurity Roundtable
We appreciate FINRA's recent announcement establishing the Financial Intelligence Fusion Center, which is an important initiative to bring firms together for real time threat management. We recommend that FINRA consider ways to encourage firm participation in the Financial

[1] 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.

[2] Regulatory Notice 25-04, FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons Published Date: March 12, 2025, Comment Period Expires: June 11, 2025, available here: https://www.finra.org/rules-guidance/notices/25-04?utm_source=MM&utm_medium=email&utm_campaign=O%5FWeekly%5FUpdate%5F042325%5FFINAL.

Intelligence Fusion Center, including convening an open roundtable specifically focused on the initiative's goals and structure.

Additionally, FINRA should consider regional forums focused on cybersecurity. Such forums would enable firms—especially those who are open about cyberattacks and vulnerabilities—to share information, learn from each other, and receive recognition for transparency, rather than facing additional punitive measures for reporting incidents. Private companies victimized by cybercriminals are too often treated by government agencies as the perpetrator which undermines the ability of the private sector and government to work together to address cyberthreats.

This approach would be particularly beneficial for regional firms who often lack the extensive resources of larger Wall Street institutions and may be more susceptible to sophisticated cyber threats. The roundtable should also address the rapid evolution of threats driven by AI and voice recognition technologies and facilitate the sharing of best practices and recommendations across the industry. By creating a collaborative environment where firms are encouraged to report incidents and share lessons learned, FINRA can help elevate the overall cybersecurity posture of the industry—especially for smaller and regional firms—and ensure a more resilient and secure financial system.

Off-Channel Communications Roundtable

We recommend that FINRA convene a roundtable on off-channel communications to explore practical solutions for managing communications outside traditional platforms with a safe harbor that reassures firms that they can participate in an open dialogue without fear of referrals to exams or enforcement. This discussion should include the development of a clear definition of "business as such" to provide firms with greater clarity on what constitutes regulated communications.

Text Messaging as an Important Communication Channel

It is essential to recognize that texting has become the primary method of communication for many individuals, including clients and families not connected to the financial industry. People text and will not stop; this is a widespread societal trend that is unlikely to reverse. As such, regulators must address the realities of how people communicate today. Simply disallowing texting as a communication channel is not a practical or effective solution.

We suggest that, from a private client standpoint, the requirements for regulatory capture of text messages should be narrowed to communications that directly involve trades or customer accounts. For institutional capital markets clients, and trading desks, only texts that pertain to clients, trades, or the color of the market should be subject to capture requirements. This approach would allow for effective oversight without imposing unnecessary burdens on member firms or infringing on personal communications.

Gifts and Gratuities

To promote regulatory consistency and reduce unnecessary complexity for firms registered as both broker-dealers and investment advisers, we recognize FINRA's recent filing with the SEC proposing to increase its annual limit on gifts and gratuities from the longstanding $100 cap to $250 per person, per year and codify various guidance issued related to the rule which will allow for uniform application across the industry. This proposed amendment represents a significant step toward modernizing the rule.

By raising the FINRA limit to $250, the proposed change would help alleviate some of the operational burdens faced by dual registrants who must currently navigate differing standards. The change would also provide greater clarity and fairness across the industry, making compliance easier and more transparent. We believe this adjustment strikes a more appropriate balance between effective oversight and practical administration, supporting both investor protection and the operational efficiency of member firms. We encourage continued efforts to further harmonize these standards in the future.

Pay to Play

We would like to suggest that FINRA consider whether there is room to provide greater flexibility under the current pay-to-play rules. Specifically, we recommend exploring whether the existing exemptions could be expanded, particularly with respect to the amount of permissible contributions. This flexibility could also benefit firms when hiring an advisor who has made a political contribution within the two-year "cooling off" period. In particular, we are interested in exploring whether the scope of existing exemptions might be broadened, including a possible reassessment of the thresholds for permissible contributions and possible exemption if an inadvertent violation is promptly remediated.

Increasing the exempted amount—such as raising the current thresholds for de minimis contributions—could help firms more effectively recruit and retain talent without compromising the rule's intent to prevent undue influence. At a minimum, we encourage FINRA to engage with industry stakeholders to discuss whether adjustments to these thresholds or other aspects of the rule are warranted in light of evolving market practices and the practical realities of political engagement.

We recognize the importance of maintaining the rule's core objective of preventing undue influence, and we believe there may be ways to balance this goal with practical considerations around talent recruitment and retention. For example, increasing the de minimis contribution limits could offer firms more flexibility while upholding the rule's intent.

We encourage FINRA to engage in dialogue with industry stakeholders and other interested parties to assess whether adjustments to these thresholds or other aspects of the rule may be appropriate in light of evolving market practices and the realities of political engagement. We

welcome the opportunity to participate in such discussions and to consider a range of perspectives on this important issue.

Form 5123 for Private Placements

In addition, we urge FINRA to consider broadening the exemptions from Form 5123 filing requirements for private placements, especially for offerings involving accredited investors (AIs) who are natural persons. Given the increasing sophistication of individual accredited investors and recent regulatory developments—including the SEC's March 2025 no-action relief obtained by Latham & Watkins, which allows issuers to rely on investor representations for accreditation under Rule 506(c)—there may be opportunities to streamline compliance burdens without diminishing investor protections. Expanding these exemptions would be consistent with the SEC's approach and could reduce unnecessary administrative burdens on member firms.

Alignment of SEC and FINRA Marketing Rules

While we recognize that progress has been made toward aligning SEC and FINRA marketing rules, we believe continued dialogue between FINRA and the SEC is important to ensure that regulatory requirements remain consistent and do not create unnecessary complexity for dually registered firms. We support ongoing efforts to harmonize these frameworks and encourage FINRA to work collaboratively with the SEC to further reduce regulatory overlap and confusion.

One area, among others, where regulatory alignment can be achieved relates to the ability of member firms to project performance or targeted returns in communications with qualified purchasers and other certain investors where specific conditions are met. In this regard, FINRA proposed changes to Rule 2210, recognizing that such changes were in many ways consistent with the SEC's Marketing Rule. We would encourage FINRA to continue to advocate for the completion of such review and the adoption of its proposed rule.

Electronic Delivery

We urge FINRA to engage in discussions with the SEC to support making electronic delivery (e-delivery) the default method for investor communications. While we recognize that the SEC has primary jurisdiction over disclosure delivery requirements, a coordinated approach between FINRA and the SEC would help modernize the regulatory framework, reduce administrative burdens, and better align with investor preferences and technological advancements. Default e-delivery-with appropriate safeguards and opt-out provisions for those who prefer paper-would enhance efficiency, reduce costs, and support environmental sustainability, as demonstrated by recent legislative proposals and broad industry support. We encourage FINRA to work closely with the SEC to facilitate this transition and ensure a seamless experience for both firms and investors. We further encourage FINRA to review rule requiring document delivery to identify areas where the volume of paper or frequency of delivery can be reduced in order to streamline communications with investors.

Onboarding of Associated Persons

We believe that FINRA rules relating to the onboarding of associated persons, particularly those who are working overseas, should be reviewed and streamlined to remove onerous and unnecessary burdens on member firms. In particular, the FINRA Fingerprint Program and related FBI requirements prohibit electronic fingerprinting collection outside of the U.S. FINRA does not have a designated vendor outside of the U.S., which leads firms to send employees to various locations with physical cards. This is extremely inefficient and raises several risks related to the transporting of physical fingerprinting cards internationally. FINRA should consider designating an offshore vendor and revisit the definition of "associated person" to provide additional flexibility for using workers in international locations to perform administrative and operational functions.

Align with SEC Rules for Payments of Commissions

Many registered representatives of independent broker-dealers operate as independent contractors and small business owners, using a pass-through entity to operate their businesses. FINRA rules prohibit broker-dealers from paying commissions directly to an entity, but the SEC allows for advisory fees to be paid directly to an entity. This creates operational complexities for both the broker-dealer and the independent financial professional, who can see fees paid to an entity and commissions to the individual, who then must direct those monies to the entity to pay business expenses. FINRA should align with the SEC and allow commissions fees to be paid to entities controlled by a registered representative.

Enforcement

We urge FINRA to reassess the alignment between the priorities of its senior leadership and those of its enforcement division, as firms continue to find it challenging to thread the needle between robust compliance efforts and the realities of regulatory enforcement. Many firms are diligently writing policies, setting standards, and implementing centralized supervision across business units to ensure compliance. These policies are designed with the expectation that supervisors will act on them, yet even with these efforts, a disconnect persists between the regulatory framework outlined by FINRA and the manner in which its enforcement staff interacts with member firms.

This disconnect is particularly acute in areas such as cybersecurity, where firms that have implemented measures consistent with regulatory guidance may still face enforcement actions from both FINRA and the SEC following cyberattacks by foreign actors. Such investigations create unnecessary burdens for firms that are already victims of external threats and risk discouraging proactive compliance efforts.

We believe that navigating this complex environment requires better education—not only for member firms but also within FINRA itself. We urge FINRA to improve the training and education of its examination teams and rule writers to ensure there is no disconnect between the intent of the rules and their enforcement. Consider also that recent SEC statements have made

clear that their staff will not undertake broad enforcement sweeps without clear evidence of violations, suggesting a more measured approach that FINRA could emulate.

Moreover, we recommend that non-enforcement senior individuals at FINRA become more engaged in the process. Their involvement would allow for a deeper understanding of firm practices and facilitate adjustments when enforcement may not be the best tool—particularly in cases where there is no meaningful harm to clients and no indication of willful rule violations. Enforcement should be reserved as a last resort for clear and significant breaches, rather than being the default response to every compliance challenge. In many cases, education, guidance, and collaborative problem-solving will be more effective in achieving FINRA's mission of investor protection and market integrity.

Conclusion

We appreciate FINRA's willingness to engage with stakeholders on these important issues and look forward to further dialogue on modernizing the regulatory framework to reflect current communication practices and technological realities.

Sincerely,

Jessica Giroux

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American Securities Association