Foreside Financial Group ("Foreside") submits this letter in response to FINRA's request for comment in Regulatory Notice 22-08 ("RFC"). We appreciate the opportunity to comment and applaud FINRA for its transparency and dedication to the protection of investors and the secondary markets. We further recognize that, in its efforts to properly regulate our securities industry, FINRA may be taking on a very difficult task that may ultimately not have a resolution. Therefore, we appreciate the continuing dialogue. Our comments are focused around 3 points: merit of defining "complex" products; the regulation of investor behavior; and the unintended consequences of segregating both investments and investors too finely. As such, our comment will take the form of broad themes limited to the items listed rather than a point-by-point response. We then will propose approaches to protect investors.

Merit of Defining Complex Product

A significant premise of the RFC is the notion that complex products can be defined and isolated. We have concerns with this line of thinking. In the "Background & Discussion" section of the RFC, FINRA acknowledges the difficulty of defining complex products, noting that:

1. *Currently, there is no standard definition of a complex product exists*
2. *FINRA has a changing interpretation (ie flexible) to avoid a static definition that may not address the evolution of financial products and technology*
3. *They could include a product with features that may make it difficult for a retail investor to understand the essential characteristics of the product and its risks*
4. *They could include a product that combines features of multiple products and strategies*

These points belie uncertainty and conflicting aims that FINRA is attempting to grapple with. The contradiction that no standard definition exists (due in part to fluidity in circumstances) while offering parameters to clarify what complex products look like should give reason to pause. Trying to regulate something that cannot be defined and has admittedly changing interpretations is inconsistent with the high standard of clarity FINRA has adhered to in the past.

One of the consequences of identifying certain investments as complex is that in doing so it suggests other investments are not complex and thus a safer investment. This is not always the case. For example, exchange listed companies (which may not be deemed complex) often:

1. *Use derivatives to hedge exposures including interest rate changes, currency fluctuations, and raw material inputs to name a few;*
2. *Enter into complicated contracts in areas such as leasing, labor, and suppliers;*
3. *Use GAAP accounting that leaves a fair amount of discretion to management opinion.*

In our view, defining one product or investment as complex seemingly defines other products otherwise and may not accurately reflect the underlying realities of any given security and may not achieve the desired outcome of better protecting the investor community.

Regulation of Registered Representative Behavior

The RFC provides several instances where members were sanctioned for failure to supervise, including examples where Registered Representatives ("RR") gave ill-suited recommendations. We agree the activities cited are detrimental to the industry as a whole and no doubt were painful for the impacted investors. However, in instances referred to, the primary failure in our view appears to have been in supervision. These were actions by RRs that do not broadly model the behavior of the majority of the industry. There is no doubt many more instances where investors agreed to the trade-off between risk and reward, were advised properly by their RR, and accepted the consequences (profit or loss).

Further to the point, the actions cited demonstrate a disregard to the Duty of Care that regulations impose upon RRs and members. Their actions were not caused or necessarily facilitated by the presence of ETPs, structured notes, CMOs, and the other products cited. Similarly troublesome recommendations could have been made with the use of products that are not within the guideline of complex products, or products outside the purview of the securities industry, with equally deleterious results. Focusing on the products cited would be akin to treating the symptoms not the disease.

The RFC does ask specifically about supervisory practices. However, in our view the rules that already apply should not be parsed out between complex and other products. Supervision of RR behavior should be monitored for any activity that causes concern including undue concentrations, conflicts of interest, and red flags for fraud, to name a few.

Imposing Investor Qualifications

We think the idea of regulating retail investor behavior to protect them from themselves, as presented, may have certain unintended consequences that could retard innovation in the markets, could reduce appropriate investments in certain products, and would be extremely difficult to implement without creating another layer of review, supervision, and cost. While the criteria were not expressly stated, the implication is that FINRA would entertain segregating people based on wealth, knowledge, or some other standard. Understandably, there are concerns over gamification of investing that treats our secondary markets like a casino. But in our view, we believe FINRA (and other regulators) must also meet investors where they are. The success of many investing apps demonstrates a demand by individuals to take control of their finances. Closing the door on investments that FINRA regards as too risky for some would only serve to exacerbate a frustrating and false divide.

Listed securities, be they single stocks or exchange traded products, should be (and has been) the realm of all investors. Innovative companies are seeking to help provide products that allow retail investors to gain the exposure they are looking for. Other pioneering companies are developing tools to assist retail investors in better evaluating the risk/return trade from common investments.

Retail investors have a long history in public markets of being given the opportunity to take risks. The multi-year drive to reduce commissions has contributed to the concern this RFC intends to address. With commissions effectively at zero, retail investors are forced to either go to managed money accounts and pay fees (that can be higher than they were paying at brokerages) or try investing on their own. The suggestion that narrowing their scope of investments is a solution to a dilemma of the regulators own making is difficult to fathom in an age where non-security investment options are

expanding. Rather than continuing to intervene, perhaps FINRA should allow investors and member firms the space to figure out the solution through the marketplace. With FINRA enforcing its existing rules, retail investors can still be protected.

Unintended Consequences

The result of classifying products as complex could:

1. *Offer false comfort that other products are not complex if defined too narrowly;*
2. *Encompass so many investments as to render the label less meaningful;*
3. *Unfairly and unintentionally advantage certain products over others while leaving the retail investor in relatively the same position;*
4. *Present an uneven playing field for retail investors if left to individual firms to define.*

Focusing attention on products, rather than the behavior of Registered Representatives and Member Firms, draws attention away from a larger concern. Removing the vehicle with which these violations are occurring does not solve the issue. Risky investments are a hydra-like problem.

Suggestions

Education

FINRA

In the past few years, the SEC has pushed investor education. The attempts at innovation are refreshing: the SEC webpage that was designed as a mock cryptocurrency investment site where all links demonstrated typical scamming attempts and then went back to a more formal investor education page is a notable example. FINRA could redouble its efforts to promote meaningful, practical educational efforts either in-house or by encouraging member firms to promote educational efforts.

Member Firms

Firms already require Continuing Education. They are often approached by wholesalers of the identified products to educate RRs. When reviewing the activities of their RRs, supervisors should look for opportunities to make the existing CE more pertinent and useful.

Investors

Opportunities abound for low priced, effective investor education. Past efforts at getting disclosures, disclaimers, and other information regarding important aspects about investing or specific products, while necessary, have not been as effective in protecting retail investors as they were intended to be. While investors should be alerted that investing is complicated, investors have an obligation to accept that investing is risky and that they cannot be protected from harm in every action they take.

Differentiation Among Member Firms

Gamification has become a buzzword for potential FINRA Rule 2210 violations. But not all gamification is the same. Understanding firms better and applying a risk-based approach when regulating the membership has been one of FINRA's successes in the past few years. How, what, and to whom member

firms communicate should be taken into account when assessing a firm's riskiness. Taken proactively, this approach would still enable FINRA to fulfill its mission of protecting individual investors and the secondary markets while letting innovation continue apace and increasing opportunities for retail investors to better control their participation in the capital markets.

Existing Rules

FINRA Rules 2210, 2111, 2010, and 3110, as well as Regulation Best Interest, are sufficient to require balanced communication, appropriate recommendations, standards of principles, reasonably designed policies and procedures, and adequate basis for recommendations. Adding more rules to members rather than properly enforcing existing rules will lead to more uncertainty and thus higher costs of running a firm without adding protection to investors.

Documentation & Supervision

Existing technology is available for firms to employ that will track the activities of RRs and allow for exception reports to help identify red flags such as concentrations of positions, activity, consistency with goals and risks, and myriad other parameters. Firms that employ such tools properly and supervise them diligently will be able to focus their efforts on the RRs and transactions that might be inappropriate.

Consistency and Guidance from FINRA

Regulation Best Interest is again a reasonable case study. Both FINRA and the SEC provided ample resources to allow firms to write policies and procedures, deploy resources, and educate their RRs in time for the compliance date. The message in the first year was also clear: indifference will be monitored and addressed, lenience and further guidance will be given for firms trying but running into difficulty. In the second year, the exam process has become less forgiving.

Offering such consistent, overt, and long-range guidance will create a more level playing field among member firms allowing for a more consistent marketplace for investors. Importantly, it will also increase the expectations of investors that RRs and member firms do indeed have obligations to a regulatory body.

Conclusion

Once again, we thank FINRA for this dialogue. Having an open conversation where various opinions and voices can be heard is a hallmark of our community and a meaningful piece toward the goal of investor protection. All members of the community have their obligations: investors to educate themselves, members to properly supervise, and regulators to create and maintain a fair playing field. These obligations can often be adequately met through awareness and adherence to the current structure rather than through additional layers of rules and administration.

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