

May 19, 2022

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 22-08: FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements.

On behalf of NYSE Group, Inc.¹ (“NYSE” or the “Exchange”), we appreciate the opportunity to comment on FINRA’s Regulatory Notice 22-08 regarding effective practices and rule enhancements for Complex Products (“Notice”).²

Our U.S. public markets provide unparalleled access to capital, liquidity and trusted regulation and are the destination of choice for investors and issuers. In considering changes to the regulatory regime for the sale of complex products, it is critical for FINRA to acknowledge the enhanced safeguards that come with providing access to complex products through the *public* markets, rather than the *private* or *over-the-counter* markets. It is also important for FINRA to preserve the ability for investors to maintain access to the many benefits that complex products can provide, such as portfolio diversity, liquidity, hedging of long-term holdings, and interest rate risk management. NYSE’s comments on the Notice are provided from such a perspective.

As an exchange, NYSE’s role is to provide investors access to the broadest possible range of investable choices, provided those investments meet our listing standards. NYSE is not providing comment here on the potential burdens on FINRA members who could be required to implement additional sales practice requirements for investors seeking access to complex products. However, we encourage FINRA to carefully balance the additional restrictions on accessing an entire sector of the financial market industry against the perceived investor protections to be gained. Investor choice and investment access are hallmarks of the U.S. capital markets. When armed with proper disclosure as to the nature of an investment, it should be up to *investors* to decide how to allocate their capital as they see fit. It is our view that the investor, or their agent working in their best interest, is most equipped to make informed

¹ NYSE Group submits this letter on behalf of New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

² Available at: <https://www.finra.org/rules-guidance/notices/22-08>.

decisions on how to deploy capital in an investment portfolio and to ultimately make their own informed investment decision based on the investor's portfolio and risk tolerances.³ Further, to the extent that the complex products described in the Notice trade in the public markets, we encourage FINRA to consider the implications for curtailing their availability. The public markets are highly-regulated and trusted, deriving from the robust disclosure and transparency that underpin which products are brought to market and available to be traded. The regulatory regime for the U.S. public markets works because it puts decision-making power in the hands of investors through access to information, while providing regulators with the tools to require issuers to provide such information and to enforce compliance with the federal securities laws and self-regulatory organization rule sets. To the extent that complex products become unattractive -- or unavailable -- to investors because of the FINRA sales practice regulatory regime, there is risk that investors will simply move into off-exchange, private market investments.

In the private markets, neither investors nor the regulators have the same quality of information available to them as is required for products traded in the public markets. Investors who invest in the private markets are provided significantly less information than is required by, for example, an ETF registered under the 1940 Act, a corporate issuer registered under the Securities Act of 1933, or an options contract traded on an exchange. The Notice's evaluation of additional sales practice requirements for complex products would benefit from considering the robust regulatory regime for disclosure already in place for these public market products today.

NYSE encourages FINRA to carefully consider whether significant modifications to sale practice requirements for complex products could inadvertently inhibit--rather than incentivize -- investment in the public markets.

Respectfully submitted,



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³ We note that the U.S. Securities and Exchange Commission ("SEC" or "Commission") adopted Regulation Best Interest (effective in September 2019) to require that broker-dealers have a reasonable basis to believe that a recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker, dealer, or such natural person ahead of the interest of the retail customer. We encourage FINRA to account for the ongoing implementation of Regulation Best Interest as it considers sales practice requirements and other restrictions on complex products.