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**Via Email To [pubcom@finra.org](mailto:pubcom@finra.org)**

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street NW  
Washington, D.C. 20006-1505

**Re: Special Notice; FINRA Requests Comment on Effective Methods to Educate Newer Investors**

Dear Ms. Mitchell:

The St. John's University School of Law Securities Arbitration Clinic (the "Clinic") would like to thank you for the opportunity to comment on this Special Notice regarding effective methods to educate newer investors. The Clinic is a curricular offering where students represent public investors of limited means in disputes against their investment brokers.<sup>1</sup> In addition to representing aggrieved investors, the Securities Arbitration Clinic is committed to investor education and protection.

The Clinic has represented retail investors who have encountered issues on various retail trading platforms and the Clinic is also frequently contacted by investors seeking assistance with these issues. Additionally, the law students who participate in the Clinic as student attorneys are sometimes users of retail investment apps themselves. Accordingly, the Clinic is uniquely situated to address the issues of educating new investors.

Recently, there has been a dynamic shift in the demographic profile of the individual investor. An increasingly large segment of the individual investors in the

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<sup>1</sup> For more information, please see <http://www.stjohns.edu/law/securities-arbitration-clinic>.

market are younger than ever.<sup>2</sup> Youth often equates to inexperience which makes these investors more susceptible to market risks because they do not have a sufficient understanding of the risks of investing. Younger investors may also be more susceptible to misleading communications from retail investing platforms.

Communications between a firm and its customers are subject to extensive regulation. For example, communications by firms “must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.”<sup>3</sup> Historically, these communications would take place primarily between a financial advisor and the customer. In this way, investors obtain a significant amount of investor education through their relationship with and communications with their financial advisor. Financial advisors are explaining their advice to their customers, and customers have had the ability to ask their financial advisors to explain or clarify terms and strategies.

However, these traditional mediums of investor education may not work for younger investors. There are a number of issues with respect to how younger investors obtain information when dealing primarily with an online trading platform. First, many platforms do not provide a person to whom an investor can ask follow up questions if they do not understand something. Further, because the investor is not interacting with a financial advisor, they may not even realize that they do not understand written materials. This is more likely to become evident if they are conversing with a financial advisor. This makes the written communications so much more important, because they have to be able to accomplish their goals wholly on their own.

Moreover, firms may have difficulties competing for and securing the attention of investors.<sup>4</sup> There are a great variety of platforms, and potential sources of information. The widespread use of social media compounds these problems. Investors may not understand which communications are coming from the firm and which are coming from unaffiliated third parties. As discussed above, firm communications are subject to extensive regulations. However, communications made by unaffiliated third parties may not be subject to any regulation or oversight. Investors are left to determine the credibility of any information they discover.

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<sup>2</sup> The FINRA funded study found that the majority of new investors were under the age of 45, had lower incomes, held smaller account balances and were more racially and ethnically diverse than investors who already owned taxable investment accounts before 2020. FINRA INVESTOR EDUCATION FOUNDATION AND NORC REPORT, INVESTING 2020: NEW ACCOUNTS AND THE PEOPLE WHO OPENED THEM, at 1(Feb. 2021), [https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them\\_1\\_0.pdf](https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf)

<sup>3</sup> FINRA Rule 2210(d)(1).

<sup>4</sup> BROADBAND SEARCH, AVERAGE TIME SPENT DAILY ON SOCIAL MEDIA (LATEST 2020 DATA), (2020), <https://www.broadbandsearch.net/blog/average-daily-time-on-social-media>.

Even when the communication is from the firm itself, it may not be readily apparent to the investor whether a communication is news or education, or if it is a recommendation. For example, one of the authors of this comment utilizes one of the online trading platforms. This firm often sends a “news update.” However, on closer examination these “news updates” have often included a tailored roundup of stocks and positions that it thinks might be of interest to the user with short blurbs for each that “advertise” the stock more than they actually explain the stock. These communications are not mere market updates; they are framed to actively solicit trading in the guise of an update. The author has an undergraduate degree in finance, an MBA, and has finished two years of legal coursework, including the Securities Arbitration Clinic. Even with this background, the author has found themselves making investment decisions relying on these communications.

This author has also received a substantial number of email invitations and notifications about options trading from the online trading platform. The firm’s social media channels also include much of the same information and encouragement. Their communications have a friendly tone and are crafted with enough brevity that makes them easily digestible and appealing. However, the brevity of the communications may mean they omit material information. For example, FINRA recently fined Robinhood for false and misleading communications. “The false and misleading information concerned a variety of critical issues, including whether customers could place trades on margin, how much cash was in customers’ accounts, how much buying power or “negative buying power” customers had, the risk of loss customers faced in certain options transactions, and whether customers faced margin calls.”<sup>5</sup>

Many of the online trading platforms leverage their social media presences. For instance, Robinhood’s twitter account boasts over 500,000 followers, while TD Ameritrade and Charles Schwab’s twitter accounts boast roughly 167,500 and 113,700 respectively. While FINRA has made it clear that the communications rules apply regardless of the platform, and has provided some guidance with respect to communicating via social media, more can be done. For example, FINRA should provide guidance as to how a firm may comply with the regulations when tweeting about their products and services.

Some of the online trading platforms utilize layered communications. The entirety of the firm’s message may not fit the character parameters of a standard tweet, but the firm may strategically include just enough information to draw interest and then use hyperlinks to direct the user to additional information. To the extent layered communications will be utilized, FINRA should offer further guidance as to what sorts of layering are effective and permissible. It is not sufficient to have provided the important information in a link if there is little likelihood that the link will be clicked.

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<sup>5</sup> FINRA, *FINRA Orders Record Financial Penalties Against Robinhood Financial LLC* (June 30, 2021), <https://www.finra.org/media-center/newsreleases/2021/finra-orders-record-financial-penalties-against-robinhood-financial>.

As noted above, investors may be consuming information from the firms and from unaffiliated third parties. Although firms may not always be adhering to the regulations, they are governed by rules setting forth requirements and restrictions on the content of the communications and are subject to discipline for failing to adhere to the rules. However, to the extent the information is coming from unaffiliated third parties, there is little that FINRA can do to regulate the content. Investors may benefit from tools to assess the credibility of third party sources. For example, FINRA may provide a checklist that sets forth the questions the investor should consider when assessing such information.

FINRA may also consider what information it makes available about online trading platforms. BrokerCheck makes limited information available about firms. For example, FINRA makes available certain information filed on the Form BD and BDW, as well as certain information about arbitration awards.<sup>6</sup> However, this may not be the information most relevant to an investor when assessing whether to do business with an online trading platform. FINRA may consider a disclosure that includes information such as (i) the primary method of interacting with customer service, including whether the firm offers live assistance and how to engage with live assistance; (ii) the services that the firm makes available to investors and whether there are restrictions or limitations on the services; (iii) whether there have been investor complaints associated with online specific issues, such as trading outages or cybersecurity issues; and (iv) whether the firm has an early dispute resolution program.

As FINRA considers what additional educational information it may make available, it is faced with the challenge of conveying that information to investors. Like firms, FINRA is also competing for the attention of investors. A core component of marketing is the strategic use of research to effectively get a message from point A to point B. Thus, a successful investor education strategy involves not only utilizing the social media platforms, but disseminating the information in a way that is most likely to be read by the investor. For example, messages on social media that are too lengthy risk not being read in their entirety or having their takeaway diluted. Accordingly, layered dissemination of information may be effective, but again, it is important that the layers be consumed and not just the initial communication. However, shorter messages may be a way to initially engage an investor. The use of links to or embedded videos may also be a way to more easily convey information.

There are other features of a communication that may make the communication more readily digestible by an investor. Studies tracking website heatmaps or “eye tracking”<sup>7</sup> show that there are innate human tendencies to shift attention to certain visual cues on webpages.<sup>8</sup> FINRA may utilize images or visual cues that signal to the reader where they should focus. Additionally, color is an important feature of a

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<sup>6</sup> FINRA Rule 8312.

<sup>7</sup> Giovanni Galfano, Mario Dalmaso, Daniele Marzoli, Giulia Pavan, Carol Coricelli, and Luigi Castelli, *Eye gaze cannot be ignored (but neither can arrows)* (abstract), NATIONAL LIBRARY OF MEDICINE (April 2018), <https://pubmed.ncbi.nlm.nih.gov/22512343/>.

<sup>8</sup> Neil Patel, *7 Marketing Lessons from Eye-Tracking Studies*, <https://neilpatel.com/blog/eye-tracking-studies/>.

communication.<sup>9</sup> For instance, the use of blue signals to a consumer a message is trustworthy and dependable. In contrast, the use of red signals a message that is bold and exciting.

FINRA may also consider requiring online trading platforms to include a prominent link to FINRA's, the SEC's, and NASAA's investor education sites, as well as social media handles. FINRA already requires that firms include a link to BrokerCheck on "(i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors."<sup>10</sup> FINRA may also require that firms include the investor education links in the same manner, and may require that firms that are active on twitter or other social media platforms disseminate the links via the platforms no less frequently than once a month or quarter.

The methods that investors utilize to place trades have rapidly changed in recent years. To properly protect investors, investor education needs to evolve as well. Thank you for the opportunity to comment on this important issue.

Respectfully submitted,

/s/  
Matthew Kipnis  
*Intern*

/s/  
Christine Lazaro, Esq.  
*Director of the Securities Arbitration  
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<sup>9</sup> Hailey van Braam, *The Psychology of Colors in Marketing and Branding*, COLOR PSYCHOLOGY (April 2020), <https://www.colorpsychology.org/color-psychology-marketing/>.

<sup>10</sup> FINRA Rule 2210(d)(8).