

June 11, 2025

**Via FINRA Website**

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

**Re: FINRA Regulatory Notice 25-04  
FINRA Launches Broad Review to Modernize Rules Regarding Member Firms  
and Associated Persons**

Dear Ms. Mitchell:

We are submitting this letter on behalf of certain clients in response to FINRA Regulatory Notice 25-04, *FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on March 12, 2025.<sup>1</sup> The Notice solicits comment on areas FINRA should consider as part of its rule modernization effort, including rules, guidance, and processes that should be a focus for modernization in light of evolving markets, changing business practices, and the adoption of new technologies.

The clients on whose behalf we submit this letter are diverse financial services organizations that are in the business of offering and maintaining retirement plan platforms which serve to provide access to investment products typically offered through third parties (the "Retirement Platforms"). These clients ("Retirement Platform Clients") rely on a variety of entities (both affiliated and unaffiliated) to complete all the functions needed to deliver the Retirement Platforms to plan sponsors and participants. Certain functions necessary to the deployment of the Retirement Platforms are performed by FINRA-member broker-dealers (*e.g.*, recommending particular securities) while others are performed by separate entities, including retirement plan recordkeepers that handle the processing and recordation of participant transactions in the plans ("Plan Recordkeepers") and potentially other parties.

Although there are differences from one plan arrangement to another, common services performed by most Plan Recordkeepers entail three core activities: (1) maintenance of records of plan participant accounts, reflecting contributions made to those accounts, investment option allocations and changes, loans, and withdrawals; (2) maintenance of a call center, staffed by telephone representatives, who can answer participant questions about their plan and take instructions from plan participants concerning the allocation of participant account contributions and balances to various investment options and the taking of loans and other distributions under the plan; and (3) participant enrollment services, including enrollment effected through online services, submission of enrollment forms distributed and collected by employer benefits staff, and the distribution and collection of enrollment forms at onsite meetings led by recordkeeper staff.

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<sup>1</sup> See, *e.g.*, FINRA Regulatory Notice 25-04, *FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons* (March 12, 2025), available [here](#).

Our Retirement Platform Clients carefully define the functions performed by Plan Recordkeepers so as to avoid any obligation to register them as broker-dealers under Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which requires the registration of any person engaged in the business of effecting transactions in securities for the accounts of others. The delineation of functions is primarily driven by guidance from SEC staff in a 1998 no-action letter to Universal Pensions, Inc. ("UPI") (the "Universal Pensions Letter"), where SEC staff indicated that broker-dealer registration would not be required for the administrative services proposed to be provided by UPI, a plan recordkeeper not registered as a broker-dealer.<sup>2</sup> The Universal Pensions Letter outlines certain "clerical and ministerial" services a recordkeeper could provide in administering a retirement plan investing in mutual fund shares without triggering the broker-dealer registration requirement.

We have become aware of certain Retirement Platform Clients having to increasingly engage in debates with, and educate, FINRA examination staff related to the intricacies of interpreting and applying the Universal Pensions Letter in the context of Retirement Platforms. These debates appear to stem from certain misunderstandings around whether a FINRA member broker-dealer is required to supervise personnel (either FINRA-registered or not registered or associated at all with the broker-dealer but rather an employee of another entity with the financial services holding company) performing functions on behalf of a Plan Recordkeeper that were specifically designated as functions that could be performed by an unregistered "recordkeeper" in the Universal Pensions Letter. These protracted debates with FINRA staff have introduced uncertainty amongst our Retirement Platform Clients as to whether the fundamental principles in the Universal Pensions Letter are being applied by FINRA staff through examinations in the way that they have been understood since the issuance of the letter in 1998. The view of our Retirement Platform Clients has been that the exams take an unduly expansive interpretation of the need for supervision by a FINRA member firm of activities and functions that are not even being performed by the member firm.

A stated goal of FINRA's rule modernization initiative is to evaluate where "FINRA's oversight of its member firms interact with other non-FINRA regulatory requirements in a manner that should be a focus for modernization . . . ."<sup>3</sup> The recent experience of our Retirement Platform Clients in interactions with FINRA staff over the application of the Universal Pensions Letter has thrown into question decades of established business practices and highlights a need for FINRA guidance in this area.

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<sup>2</sup> *Universal Pensions, Inc.*, SEC No-Action Letter (pub. Avail. Jan. 30, 1998).

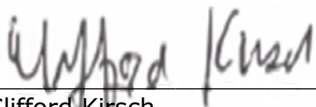
<sup>3</sup> See the Notice at 4.

On behalf of our Retirement Platform Clients, we appreciate the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or [CliffordKirsch@eversheds-sutherland.com](mailto:CliffordKirsch@eversheds-sutherland.com)) or Eric Arnold (202.383.0741 or [EricArnold@eversheds-sutherland.com](mailto:EricArnold@eversheds-sutherland.com)) with any questions or to discuss this comment letter.

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Respectfully submitted,

**EVERSHEDS SUTHERLAND (US) LLP**

BY:   
Clifford Kirsch

BY:   
Eric Arnold