



Securities Arbitration Clinic
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Via Email to pubcom@finra.org
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1505

Re: FINRA Regulatory Notice 25-07; Supporting Modern Member Workplaces

Dear Ms. Mitchell,

Thank you for the opportunity to provide feedback in response to FINRA's request for comment on modernizing its rules, guidance, and processes for the organization and operation of member workplaces. We write this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law. The Clinic is part of the St. Vincent de Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents underserved investors with small dollar claims and is committed to investor protection and education.

The Clinic supports FINRA's efforts to modernize its rules related to supporting modern member workplaces and emphasizes the importance of FINRA maintaining a focus on investor protection broadly, and specifically, as discussed below, as it reviews rules related to registration process and information, delivery of information to customers, recordkeeping and digital communications, and fraud protection.

Registration Process and Information

BrokerCheck offers free online access to background information about registered persons and firms. By providing such access to employment history, regulatory actions, customer disputes, and licensing status, this service assists investors in making informed choices about financial professionals and firms.

However, despite the access provided by BrokerCheck to information about both registered persons and firms, the information provided about firms is currently less accessible and comprehensible for investors than the information provided about registered persons. It is difficult for an investor to use BrokerCheck to make an informed choice about investing with a firm when, for example, trying to compare the BrokerCheck report of a small firm that has been in business for a few years with a few disclosures listed to the BrokerCheck report of large firm that has been in business for decades with hundreds of disclosures listed. Thus, we recommend that FINRA consider improvements to the presentation and substance of firm disclosures, potentially by integrating more comprehensible summaries or compiled data and by incorporating ways to make it easier for investors to evaluate firms in an apples-to-apples type of comparison.

In addition, we recommend that FINRA consider technical improvements to the appearance and manner of the reports across the board for registered persons and firms. First, we recommend that detailed reports (PDFs) include the date the report was generated by the investor. An auto-generated timestamp on the report would help investors keep track of their BrokerCheck search histories and better identify changes to the reports. Second, we recommend that FINRA expand the auto-populate feature in the “City, State or ZIP” search field to allow auto-population of the “Individual Name” and “Firm Name” search fields to make the tool more user friendly. Third, using regular font rather than all caps font for the details populated about registered persons and firms, especially in the lengthier sections like the disclosure events allegations that can be particularly dense, would improve readability of the PDF reports.

Finally, FINRA should include additional hyperlinks in the reports to help investors conduct further research and better navigate the content provided. FINRA already includes hyperlinks to investor protection information in the initial pages of the reports, which connect users directly to further relevant information. Linking to and layering additional information would help novice and unsophisticated investors, in particular, understand and follow up on the information shared in the reports. For example, most investors, like our clients, are unaware of the existence or capacity of FINRA’s Disciplinary Actions Online and Arbitration Awards Online databases. As the reports do not appear to consistently contain hyperlinks to the regulatory events and customer disputes in these databases, we recommend that FINRA include these links whenever the underlying documents are available. In addition, to improve navigation within the reports, we recommend adding internal links from the first page of the report to the corresponding sections later in the report.

Delivery of Information to Customers

As FINRA evolves its guidance regarding the electronic delivery of information to customers, investor protection should remain the priority to ensure that information is shared in a manner that benefits, rather than manipulates, investors. Firms should be required to ensure that customers’ consent to receipt of electronic delivery is informed and meaningful, and subsequently to provide full and fair disclosures through electronic delivery.

When customers opt in to electronic delivery of information, firms should use modern technological capabilities to improve the efficiency and effectiveness of disclosures and other information shared with customers to help them understand and track their investments and complete financial picture. For example, when emailing customers a link to a PDF of a

document, such as an account statement, firms should take advantage of the opportunities offered by digital media to incorporate layered dissemination of information and dynamic tracking tools into materials electronically delivered to customers.¹ At the same time, firms should allow customers to retain the ability to easily print or download a PDF of documents, such as account statements, for their records if they so choose.

Additionally, FINRA should require firms to affirmatively promote and incorporate its already-existing and regularly-updated educational materials, available at finra.org/investors and on the FINRA Investor Education Foundation webpage, into the materials they share with customers. For example, similar to requiring a link to BrokerCheck on firm or individual representative websites, FINRA should require firms to incorporate the delivery of investor education materials into documents provided to customers, while considering other ways to expand the reach of these materials, such as through social media platforms.²

Recordkeeping and Digital Communications

As FINRA modernizes, updating rules and guidance regarding recordkeeping and digital communications is essential to ensure firm and registered person compliance and investor protection in today's marketplace.

FINRA Rule 2210's requirement for fair and balanced communications should continue to apply to new digital communication channels to protect investors as technology advances. As emerging communication technologies evolve, FINRA should require firms to proactively develop technological competence and up-to-date processes for using digital communication channels, and require firms to supervise digital communication channels and implement effective systems to capture and retain customer interactions across such channels. This would allow firms to take advantage of new communication technologies to effectively communicate with customers in ways that reflect the way customers and brokers actually operate in the modern workplace, while ensuring that firms properly supervise and retain these communications.

Fraud Protection

As fraud grows more complex and sophisticated, investor protection should remain a priority for FINRA and its members, especially as the emerging technologies used by fraudsters often advance faster than existing protections. This includes fraud perpetrated by third parties (e.g., hacking and account takeovers) and customer actions influenced by third parties (e.g., relationship scams).

The Clinic has been contacted by many investors who have been subjected to third party fraud and lost their life savings. When evaluating its rules for modernization, FINRA should

¹ The Clinic addressed this issue and provided suggestions in its 2021 letter in response to FINRA's Special Notice regarding Effective Methods to Educate Newer Investors. *See* https://www.finra.org/sites/default/files/NoticeComment/Matthew%20Kipnis%20%26%20Christine%20Lazaro_St.%20Johns_8.30.2021%20-%20Comment%20Letter%20-%20FINRA%20Special%20Notice.pdf.

² The Clinic also addressed this issue and provided suggestions in its 2021 letter in response to FINRA's Special Notice regarding Effective Methods to Educate Newer Investors. *See id.*

keep in mind considerations regarding fraud risks both from external third party fraudsters and from customer decisions or requests influenced by a third party. These frauds often present basic red flags that should be relatively easy for firms to identify through processes that are being used in other financial services arenas. As part of firms' duty of care, FINRA should revisit rules that require firms to adopt monitoring systems to detect suspicious activity, such as location mismatches, third-party logins, or unusually large or suspect withdrawal requests, as well as rules to implement steps to prevent further subsequent financial exploitation and loss. These rules can be adapted from already-existing best practices in the financial and other sectors. This approach would help firms proactively identify risks before harm occurs and mitigate damage to their customers, while lessening the possibility of future customer claims related to third party fraud.

Bridging this gap, FINRA should expand the application of Rule 2165 regarding the financial exploitation of specified adults to facilitate the protection of all customers from the risks of fraud. First, the term "specified adults" should be expanded to include any customer where there is a reasonable belief of financial exploitation. Second, the rule's permissive allowance for members to place a hold on a customer accounts should be expanded to require a hold to be placed on accounts when there is a reasonable belief of financial exploitation. In addition, FINRA should require firms to share more information with customers regarding Rule 4512(a)(1)(F) regarding trusted contacts, using some of the suggestions regarding layered dissemination of information described above. Many customers, including our clients, are confused about the type of authority granted to a trusted contact. They fear that they are handing over decision-making power if they provide information for a trusted contact and are, therefore, often hesitant to do so. When firms request trusted contact information, Rule 4512 should require them to provide educational information, including a customer-friendly version of the details provided in Supplementary Material .06, to facilitate customer understanding of trusted contacts and the protective role they can play in their accounts.

Thank you for the opportunity to comment on these crucial issues as FINRA seeks to modernize its rules.

Respectfully Submitted,

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