May 9, 2021
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")

Dear Ms. Mitchell:

Webull Financial, LLC appreciates the opportunity to comment on the Notice regarding Complex Products and Options Effective Practices and Rule Enhancements. The core of Webull's mission is to empower the individual investors with a self-directed brokerage account to access financial markets using the best tools and technology.[1] Since individual investors are at the heart of our business, Webull understands the importance of rules and regulations which aim to protect clients' best interests. As technology, businesses, and access to the financial markets have changed over time, so should the regulations on products. The contents of this response will highlight areas where financial regulations surrounding complex products and options are either sufficient, inadequate, obsolete, and or in need of changing.

I. Complex Products

For the past 30 years individual investors have benefited from the financial innovations known as Exchange Traded Funds (ETFs). The first ETF, which came into existence in 1993 is ticker SPY.[2] SPY is now one of the top traded securities in the US stock market. It aims to track the performance of the S&P500 index, allowing investors to efficiently gain exposure to the companies' stocks that make up the index. Since then, more ETFs have been created which seek to track the performance of sectors, commodities, as well as offering multiple leverage and inverse features on the underlying benchmark. These products have allowed investors to speculate on the price movements within various financial markets by simply placing an order in their brokerage account as if they were purchasing a stock. For example, instead of opening a futures account to speculate on the price of Silver, which may require anywhere from $2,000 to $10,000 minimum deposits at a futures exchange, an investor can purchase a Silver ETF, such as SLV, which will track the price of silver. Similarly, with leveraged ETFs which seek to provide double to triple the return from an underlying's price movement, individual investors are given access to a particular strategy that they could otherwise not have been able to construct on their own given the high upfront costs.

Indeed, investors who are allured to the high returns that these complex financial products may offer should be provided with some level of protection. Already the SEC has enacted rules

[1] "Who We Are." Webull Financial, LLC, Webull.com, May 9, 2022 https://www.webull.com/story#:~:text=We%20are%20committed%20to%20synergizing,Enjoy%20Investing.
[2] "The ETF Files. How the U.S. government inadvertently launched a $3 trillion industry." Balchunas, Eric. Bloomberg.com May 9, 2022. https://www.bloomberg.com/features/2016-etf-files/

around ETFs to provide full transparency to investors with the risks and how the products work[3]. The SEC informs individuals that before they invest, they should read the registered investment companies' prospectus. In addition, the broker-dealer is required to deliver the prospectus to an investor upon purchasing shares.

To further protect investors' best interests, Webull suggests that whenever certain complex products are communicated to clients a standardized disclaimer similar for Options must be followed which states that they are risky, not suitable investments for everyone, may result in a total loss, and to read the ETF company's prospectus before investing. Anything more for a self-directed account, such as testing requirements, "appropriateness" to transact in these products, or trading restrictions would lead to more red tape, loss of market efficiencies, higher costs to individual investors, and be perceived as making a recommendation.

At the time of this writing, it's clear from the overwhelming response individual investors made to this Notice, that they want unimpeded access to these investment products. Mandatory disclaimers will serve to protect investors from these products without imposing any additional burdens.

II. Options

With respect to FINRA's request for comments on "Options Effective Practices and Rule Enhancements" Webull understands the concerns that regulators have expressed with regards to the increase in retail trading of options. Options *are not* suitable for every investor and because they can result in rapid losses in excess of required initial deposits, there should always be disclaimers pointing to that fact. FINRA has created Rules 2220 Options Communications and 2360 Options to regulate how options are communicated, approved, and supervised by brokers.[4][5] However, the current rules for regulating self-directed brokerage firms for Options Communications and for the Approval and Supervising of Options, are antiquated, unapplicable, and need to be amended.

As FINRA pointed out in the Notice, the rules governing options accounts have remained largely unchanged since they were put in place following an SEC study of oversight of the options markets in 1978.[6] At that time an investor could only transact in options through contact with a registered professional. Requirements listed in Rule 2360 and 2220, were originally created with the intention of protecting investors from Registered Investment Advisors (RIA) from prohibited practices. Practices like churning, to generate commission for the broker, without regard for customer's investment objectives, risk tolerances, and losses, had to be monitored. In addition, misleading recommendations that exaggerated the claims on returns on Option Programs sent by RIA's were prohibited. But now investors can place option trades themselves, online, in a self-directed account, at their own volition, without the solicitation, recommendation, or guidance of a

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[3] "Information Available to Investment Company Shareholders" U.S. Securities and Exchange Commission. Investors.gov May 9, 2022 https://www.investor.gov/introduction-investing/investing-basics/glossary/information-available-investment-company

[4] "2220. Options Communications" FINRA. Finra.org, May 9, 2022. https://www.finra.org/rules-guidance/rulebooks/finra-rules/2220

[5] "2360. Options" FINRA. Finra.org May 9, 2022. https://www.finra.org/rules-guidance/rulebooks/finra-rules/2360

[6] "FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements" FINRA. Finra.org, May 9, 2022 https://www.finra.org/rules-guidance/notices/22-08

registered representative or advisor. The rules governing option trading accounts need to be ratified to address self-directed option trading accounts separately. Otherwise, enforcing rules which no longer have a basis, results in unnecessary scrutiny that not only doesn't help investors but impedes their ability to transact in options.

One aspect of Rule 2360, "Options", which states the guidelines for approving and supervising customers for option trading, places unnecessary requirements on member firms who are trying to fulfill obligations that do not apply to self-directed accounts. For example, FINRA's requirements under Rule 2360(16)(b) states that to approve a customer's account for options trading members must collect the customer's investment objectives. Then in accordance to Rule 2360 (19) (C), members are then also required to supervise that the customer is trading within their investment objectives, note the size and frequency of option transactions, profit and loss, commissions generated, etc. The intent of this rule was designed to protect investors from their registered investment advisors with discretionary authority from placing unsuitable trades in their accounts to generate commission for the broker. By having a Registered Options Principal (ROP) of a RIA firm review the trading activity in these advisory accounts, the ROP can ensure that the broker with discretionary authority is acting appropriately. The ROP will cross-check the option trades with the original investment objective to make sure they are being adhered to. Furthermore, a review by the ROP of the size and frequency of option trades, commissions generated, and profit and loss in the account, can detect inappropriate trading activity. But for self-directed accounts where individual investors make their own decisions, there is no purpose for this oversight.

There are multiple investment objectives that a self-directed investor could possibly have, while also being granted access to trade various option strategies. Member firms have, on their own, developed a standard of approving customers to trade within defined option levels which are ranked from lower risk, less complicated option strategies to higher risk, more complex strategies. These various levels and option strategies themselves contain multiple investment objectives. As an example, Level 2 permits trading long calls and puts which encompass investment objectives of speculation, growth, and hedging. But it also includes access to trade a lower level, Level 1, for covered calls and cash secured puts, which includes the investment objective of income. Not only is it impractical to select just one investment objective but given the wide range of option strategies available and their associated investment objectives, customers may very well trade outside their originally stated investment objectives to trade other pre-approved option strategies available within their account. Therefore, member firms who offer only self-directed option trading should not be required to decide which level a client is eligible to trade based upon their investment objectives and additionally should not be obligated to supervise if a customer is trading within it.

By not updating the various rules surrounding the option approvals for self-directed accounts and continuing to enforce supervisory practices around those rules, member firms are left in a quagmire trying to satisfy a conundrum of a regulatory requirement. Instead FINRA should make amendments to the rules surrounding the account opening process for self-directed accounts so that it only requires highly visible, full disclosures before trading options. This should include some form of a written electronic acceptance to the risks and an understanding to the strategies they apply for. By providing the Characteristics and Risks of Standardized Options Disclosure Documents, brokerage firms are already fulfilling this requirement. Investors who apply to trade options in their online self-directed platforms are doing so on their own volition. As long as they are made aware of the risks and option strategies they are applying for, and attest to it, there should be no additional barrier to entry for investors.

From our experience, creating a screening process which either approves or denies an individual from trading option strategies they desire comes with its pros and cons. The benefits to having this system is that we can reasonably screen out investors who do not have sufficient experience and or understand options and their risks. However, for the clients who are not approved, we are met with a lot of dissatisfaction. An attempt to provide a teachable moment to advise clients why they were denied can potentially be construed by FINRA as acting unethical under a "catch-all" rule 2010 per a recent regulatory enforcement action.[7] These investors are left with unsatisfactory answers to their questions as to why they were denied. Allowing investors to trade lower risk option strategies such as selling covered calls and cash secured puts, when denied for higher Levels, showed little benefit as only 1% of our clients engaged in Level 1 strategies after not initially being approved for Level 2. To further discourage broker-dealers from teaching clients who were previously ineligible for options, lawsuits were filed in Florida towards a broker-dealer who acted as a "teacher" because it implies a fiduciary responsibility.[8] Member firms who attempt to educate their clients who were previously ineligible to trade options may then also be targeted for assuming a fiduciary duty. With no guidance from FINRA on how to handle clients who were not approved for options, or any legal protection from educating clients, there now exists a subset of discouraged want-to-be option investors.

Our research has shown that other self-directed member firms have deviated from the standard screening process that collects information but instead discloses the associated risk tolerance and investment objectives that comes with choosing to trade a specific option strategy. Whether or not this is an acceptable practice according to FINRA Rule 2360 (16)(b) remains unknown until an official guidance on this practice is made by FINRA. The benefits to disclosing the associated risks, investment objectives, minimum capital requirements, and necessary investment experience is that it places the responsibility in the hands of the investor to decide for themselves if certain option strategies are appropriate for themselves. For self-directed accounts, it seems that this is most optimal way of approving accounts to trade options. Full disclosure both protects prospective investors and places no impediments to retail investors who wants to trade options.

The remainder of the comments stated here will address each question specifically asked by FINRA regarding Options for self-directed broker dealers.

1. *What practices have proved effective with respect to compliance with the options requirements, including supervision, disclosure, and account approval requirements?*

The benefits of screening investors for the "appropriateness" to transact in options is that a reasonable determination can be made whether or not the clients understand the products, the risks, and can bear the potential financial loss. By implementing a mandatory screening process investors can self-identify their experience level, their understanding of the products, and the risks, all while at the same time being provided with the proper disclosures.

Webull will verify clients' general investment experience, option investment experience, risk tolerance, and investment objectives, independent of one another. Whereas other brokers

[7] https://www.finra.org/sites/default/files/2021-06/robinhood-financial-awc-063021.pdf

[8] "Robinhood allegedly implied a fiduciary duty to novice investors in the marketing of its 'game-like' trading app, even though it's a FINRA-regulated broker-dealer, new class action charges" Breen, Oisin. RIABIZ.com May 9, 2022. https://riabiz.com/a/2020/11/17/robinhood-allegedly-implied-a-fiduciary-duty-to-novice-investors-in-the-marketing-of-its-game-like-trading-app-even-though-its-a-finra-regulated-broker-dealer-new-class-action-charges#:~:text=Robinhood%20takes%20a%20fiduciary%20role,assets%2C%22%20the%20suit%20asserts.

option applications may simply label the associated risk tolerance, or investment objective that comes with each option level they desire. By independently screening each variable of clients' background information, the clients' information we gather must remain consistent with the riskiness and experience level for the option strategies they desire, otherwise they will not be approved.

As stated previously though, for the remainder of clients that do not pass the screening process, there is uncertainty as to what the best course of resolution may be. Some clients may have simply made a mistake on the option application, whether by misinterpreting a term, or unintentionally selecting the wrong designation. Either way, it's impossible for a member to know if the information the client provides in the screening process is accurate, false, or submitted in error. Perhaps the best resolution is not to place it upon member firms to be required to screen investors for the "appropriateness" but instead leave it upon the hands of the investors to decide for themselves if options are appropriate for them.

2. *Are there additional requirements that should be added to the existing options requirements? For example:*

1. Current SRO options rules (e.g., FINRA Rule 2360(b)(16)) require that a member must approve a customer to trade options and requires the member to exercise due diligence to ascertain the essential facts relative to the customer to determine if it is appropriate to approve the customer to trade options. Members have implemented this requirement in varying ways. Many members have developed a system of options "levels" ranging from less risky options and strategies to more risky options strategies based on the customer's risk tolerance, investing experience and upon the customer opening a margin account. Members also have developed processes to determine when a customer may "move up" to the next level of options trading. Should specific standards apply for the kinds of options and strategies that are permitted at a given level and standards for a customer to be approved for each level?

a. What kind of options should be permitted for each level?

b. What should the standards be to approve a customer for each level?
c. Should members be required to make a suitability determination for each level regardless of whether the account is recommended or self-directed?
d. Should members be required to make a determination whether a customer should be permitted to use margin for each option level where margin is required, regardless of whether the account is recommended or self-directed?
e. Should members be expected to provide specified information and customers to meet specified objective criteria, such as having a certain number of years of trading experience or having a specific amount of equity in their account prior to trading options? Should members be required to provide additional information and for customers to meet additional objective criteria (for example a higher level of equity or more years of trading experience) as the level of options trading increases? If so, what information should a member be required to provide and what information should a member obtain in order to determine if the account is appropriate to trade options?

Webull is of the opinion that as long as investors in self-directed accounts are screened for the "appropriateness" of options, and given the necessary disclosures, that investors should be eligible to transact in options. Webull is of the opinion that complex option strategies where losses

can exceed the required initial deposit, should require a higher level of experience, risk tolerance, and financial background. Member firms with adequate risk controls and margin accounting should be able to dictate how much financial background its own client may need to enter into these more complex option strategies. There should not be a specific standard that FINRA applies across brokers, since the end result may uniformly discriminate against a certain background of investors who want to trade options. If there was to be a uniform standard that is created, all members should be able to agree upon it beforehand, and if even just one member firm opposes it for the reason stated previously, it should not be enacted. Instead, brokers should be able to allow all investors who have a willingness to accept the risks, understand the product, and meet the capital requirements to enter into an option transaction. However, if FINRA allows members to set their own approval criteria, they must also specify the exact routine that they want performed, and the minimum requirements in order to satisfy them. While members have followed FINRA's guidelines on the option approval process, there have still been enforcements actions issued for conduct that was not explicitly prohibited. FINRA cannot cry foul if they leave it upon the member firms to choose the "appropriateness" for investors to transact in options without setting a minimum requirement.

Member firms should also not have to make a suitability determination to permit the use of a margin account for option strategies as long as the investor is provided with a margin disclosure agreement.

Webull would not be opposed to openly disclosing to investors the specifics to trade certain levels. Webull does maintain the belief that someone who has never made any investments before in any underlying security should not be approved to trade derivatives. Additionally, it is our opinion that investors need to have a certain financial background and experience trading options before entering more complex option strategies. Full disclosure to investors regarding the requirements will create a mutual understanding between members and investors with regards to how it's necessary to have investment experience, a high-risk tolerance and understanding of options when applying. As mentioned before, investors who are denied for options are left facing a rather opaque rejection process due to the current regulatory environment.

2. *Should members be required to have a conversation with each customer, regardless of whether an account is self-directed, or options are being recommended, prior to approval to trade options to ensure that it is appropriate to approve the customer to trade options? How would this best be implemented for a customer who has an online account?*

Members should not be required by regulators to have a conversation with each customer for self-directed accounts, prior to the approval to trade options. The idea is impractical to implement for broker-dealers who have thousands of applicants apply every day. Investors who want to trade options would have to wait abhorrently long time to be reviewed. In addition, there would be a high cost of capital labor imposed upon brokers. The task can easily be performed automatically by a computer program, which makes fewer mistakes and requires less capital to maintain. Webull's self-directed brokerage platform allows investors to access the markets without the need of interacting with a person. Not every investor necessarily wants to speak to a person when they apply for options. If a client ever has any questions or wants to have a conversation regarding the option application process, Webull is always willing to make accommodations to schedule a call. So far, however, there has not been any demand by our clients to engage in a conversation when completing the options application.

3. *Should periodic reassessment of the retail customer's account be required to ensure that the initial account approval for options trading remains appropriate?*

For self-directed accounts, where investors choose to transact in options on their own accord, Webull is of the opinion that there does not need to be a periodic reassessment so long as investors are provided with ample opportunities and reminders to keep their information in their account current so the system can ascertain a comprehensive picture of eligibility. If a client was no longer eligible to trade options, our systems would remove option trading capabilities. Any further additional assessment during the lifetime of the account becomes overbearing on investors.

4. *Should targeted communications, such as push notifications to self-directed retail customers, regarding options be subject to specific restrictions? For example, should they be restricted unless certain conditions have been satisfied, including, for example, that the account has been approved for options?*

Targeted Communications, such as push notifications to self-directed retail customers, regarding options are already covered under FINRA Rule 2220. Webull follows the guidelines within the rules regarding communications of options to the public. This includes providing an options disclosure, making fair and balanced statements, as well as not making false misleading statements, or exaggerations. Originally Rule 2220 was intended to protect investors from predatory Option Program communications that registered investment advisory firms would send to clients to lure them into option trading recommendations. While Webull is not in the registered investment advisory business, the current rules can be applied to communications that are sent to self-directed accounts. As long as Option Communications follow the guidelines set forth in FINRA Rule 2220, there should not be any restriction on who can receive a message.

5. *Currently, Rule 2220(c)(1) requires that all retail communications issued by a member concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus be submitted to the Advertising Regulation Department of FINRA at least ten calendar days prior to use. Should members be required to file all retail communications that promote or recommend options or options strategies prior to use?*

Webull is of the opinion that communications which inform clients and prospective clients of the availability to trade options, or regarding factual characteristics regarding options, should not be required to be filed with FINRA prior to use. The current standards require broker dealers to maintain records of all communications which are available for review upon request by FINRA.

6. *Should members be required to provide customers specific educational or training materials in addition to what is already required before a customer, including a self-directed customer, may be approved to trade options?*

i. *After receiving additional education or training, should customers be required to demonstrate to the member the customer's understanding about options? What form of demonstration would be most efficient and effective? Should the demonstration include answering questions or otherwise demonstrating understanding of options?*

ii. *SRO options rules (e.g., FINRA Rule 2360(b)(16)) require that a member give a customer the Options Disclosure Document[81] prior to approval for options trading. Should*

a simple, perhaps single page, disclosure document that focuses on the key risks of trading options be required to be delivered, in addition to the ODD, to a customer prior to approval for options trading?

A. What are the key risks that should be communicated other than those set forth in the ODD?

B. Should members also receive an acknowledgement of understanding of the risks of trading options from customers before approving a customer to trade options? Should this requirement to acknowledge an understanding of the risks of trading options be required to be completed every year?

Member firms should not be required to provide customers with specific educational or training materials in addition to what is already required before a customer, including a self-directed customer, may be approved to trade options. In addition to the high implementation costs on members, there would then become even more scrutiny on the members whether the training is sufficient or not. Furthermore, training would be burdensome for investors who have already received prior education. Lastly given the amount of information sharing on the internet it would be impossible to protect the prevent answers from any required tests from being disseminated to the masses. Investors should take it upon themselves to become educated. As long as the customer states that they understand the option strategies which they are applying for, have sufficient experience, and risk tolerance—there should not be any additional requirement.

Webull would not be opposed to requiring member firms provide prospective option investors a one-page summary of the risks of option trading. While the Options Disclosure Document is a comprehensive and appropriate disclosure to provide to clients, a separate summary sheet of the risks may provide more visibility to investors.

By signing off on an option agreement a client is agreeing that they have read the disclosures and understand the risks of trading options. An additional annual requirement to recertify their understanding is unnecessary.

7. Should members be required to display total position risk for retail customers holding positions in options, or holding positions that have been entered into as the result of an options assignment? For example, where a customer holds positions in both an option and the underlying instrument, or in multiple options on the same security, such that the exercise of an option may act to limit overall risk, should members display the maximum potential loss and gain for each underlying asset based on their combined option and underlying exposure?

Member firms should not be required to display total position risk for retail customers holding options or positions as a result of an options assignment. Investors who enter into these option contracts should understand the potential risks of holding the options entail including if they are exercised. Any feature of the like provided by members to investors would be considered an add-on, proprietary tool created by the member for the benefit of their clients.

8. SRO options rules (e.g., FINRA Rule 2360(b)(20)) detail the supervisory requirements for options, as we explained in Regulatory Notice 21-15. Should members conduct heightened or more frequent supervisory review after they have approved a customer, including a self-directed customer, to trade options? What form of heightened supervisory review would be most efficient and effective? If distinct from heightened supervisory review, what form of frequent supervisory review would be most efficient and effective? How often should the review occur?

As mentioned previously, Rule 2360 (b)(20) is an antiquated rule that should not be imposed upon member firms who service self-directed brokerage accounts. Items (i), (ii), (iii), and (iv) should not be required of members who service self-directed accounts.

(i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;
(ii) the size and frequency of options transactions;
(iii) commission activity in the account;
(iv) profit or loss in the account;

If an account was already approved to trade options in a self-directed brokerage account, there is no basis for conducting the above reviews.

9. If in reviewing an account, a member identifies that a customer has entered into an options transaction (such as a spread traded above parity[82]) whereby it is impossible for the customer to profit from the transaction, should the member be required to pause or suspend the customer from further transacting in options or certain kinds of options?

No, the member should not be required to pause or suspend the customer from further transacting in options. If a customer has entered into such a transaction, it was due to their misjudgment, and they should not be penalized from trading any further in their account.

10. SRO options rules (e.g., FINRA Rule 2360(b)(23)) provide that option holders have until 5:30 p.m. ET on the business day of expiration, or, in the case of a standardized equity option expiring on a day that is not a business day, on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. Members may not accept exercise instructions after 5:30 p.m. ET. However, members may establish fixed procedures as to the latest time they will accept exercise instructions from customers. Some members have set a deadline for customers to make an exercise decision prior to 5:30 p.m. ET deadline, for example by 4:00 p.m. ET. Should all members give investors to 5:30 p.m. ET to make a final exercise decision?

No, member firms should not give investors until 5:30 pm to make a final exercise decision. If a member has set a deadline to submit instructions its because to the operational processing time constraints that they are under. Webull's current policy is to grant exercise instructions to be submitted up until 4:30 pm the day prior to expiration date. Any requests submitted afterwards are said to be handled on a best-efforts basis. It is not practical for a broker-dealer to be required to handle a large volume of exercise requests to submit minutes before the deadline. While Webull is striving to build technology that will allow for a cut-off time as close to 5:30 pm as possible, it is not currently reasonable to implement a rule that requires brokers to accept and process all exercise submissions up until 5:30 pm.

11. Would any of the aforementioned obligations unduly or appropriately restrict investor access to options?

Yes, the following aforementioned obligations would unduly restrict investor access to options in self-directed brokerage accounts: Testing requirements, FINRA imposed minimum investor background requirements, minimum capital requirements, holding periods before "moving" up to other levels, pre-screened phone calls, periodic reassessments, mandatory communication filings with FINRA, mandatory education or training before option approvals, heightened and more frequent supervisory reviews. For self-directed accounts these burdens impede investors from accessing the markets to trade options. As long as individual investors are given the proper disclosures, agree to their understanding, and or are screened for "appropriateness", investors are given enough protection and information to transact in options.

Webull would appreciate the opportunity to further to discuss with members, investors, and FINRA on the best practices to approve and supervise clients who wish to transact in options. If you would like to involve us more in the process, we would love to collaborate.

Sincerely,

John Coker
Senior ROSFP
Webull Financial, LLC