Ms. Marcia E. Asquith, Executive Vice President
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1500

May 9, 2022

Re: FINRA Regulatory Notice 22-08

Dear Ms. Asquith:

The undersigned have over 80 years of service to investors in industry and regulatory roles. We commend FINRA for its attention, by crafting Notice 22-08, to the risks posed to investors by complex financial products. The dizzying growth in options contract volume, the explosion of speculative ETFs and ETNs, and the efflorescence of supposed "crypto" investments appears to us as having proceeded without sufficient regulatory guardrails or timely enforcement. As the familiar line reminds us, "You never know who's swimming naked until the tide goes out."

1) Insufficiency of a Disclosure Regime: Addressing complex products and placing to the side options trading, these products are launched on the false premises of disclosures meaningfully encompassing the risks of these products. With these novel products the risks cannot be fully known when they are created, ensuring inadequate disclosure. Our argument:

a) On April 20, 2020, the futures contract price for the immediate month (May) of West Texas Intermediate (WTI), the U.S. benchmark crude, went negative. The May futures contract price fell $55.90 during the day, to close at negative $37.62 per barrel.[1] On April 21, the June WTI contract fell by 43% to $11.57 a barrel (Ibid). On April 21, 2020 an ETFs holding a 25% position of the total of expiring May WTI oil future contracts admitted to the SEC it was swimming naked and advised the SEC it was suspending "new creation baskets."[2]

b) In February 2018 a $2.2 billion Credit Suisse ETN lost 96% of its value overnight. The culprit was an inverse volatility note.[3]

c) Anyone who tells you where the market will be at x-point in the future is lying. Anyone who says that they know how these engineered products will perform under plague, war, inflation, and domestic insurrection is also lying. Stop Creating Stupid Products!

2) Options Regulatory Regime: The conjunction of meme stock mania, the disintermediation of financial professionals via option gamification platforms, and the stratospheric rise in option

[1] "Crude Oil Futures Prices Turn Negative," https://crsreports.congress.gov/product/pdf/IN/IN11354
[2] "World's Largest Oil ETF Halts Creation Of New Trades As Crude Prices Collapse," April 21, 2020, https://oilprice.com/Latest-Energy-News/World-News/Oil-ETF-USO-Halts-Creation-Of-New-Trades-As-Crude-Prices-Collapse.html
[3] Financial Times, "Credit Suisse Defends High-Risk ETN," and "Exchange Traded Products Face Scrutiny as Worries Deepen," February 15, 2018.

trading should have long ago triggered a re-examination of who trades options. How many more suicides are required to get this fixed?[4]

3) Market Unsuitability (Not Investor Unsuitability): Yet at its heart, FINRA's proposal merely seeks to mitigate the pernicious effects of unsuitable financial instruments that (as demonstrated above) should not be unleashed on investors in the first instance. Placing to the side that these products exist to benefit the casino operators, these products are unsuitable--not just based on their inappropriateness for most investors—they are unsuitable because the speculative, derivative contracts that underpin them are destroying the reliability of the pricing function of the underlying cash market.

The cash market for stocks, bonds and notes must be regarded as a commons affording price discovery and liquidity for investors. The options market affords the cash market some speculative opinion about the potential future direction of the cash market. However, there surely comes a point where the good functioning of the cash market is imperiled by irrational speculation in the derivatives markets. That is surely the lesson of the meme stock mania and the equities buffeted by the collapse in March 2021 of Archegos Capital Management when invisible, stupendous, derivative-based equity stakes were revealed.

These situations are clear examples of **market abuse**. They exact a large and unjustified terror toll on investors in the cash market for investment securities. To repeat, the unchecked conduct of the derivatives players is impressing and ever-increasing casino character upon the cash markets via large price shifts and volatility. This risk-elevating character is occurring at the very time that wage America is dependent upon a credible marketplace for its saving and retirement objectives.

What Must Be Done: We focus below on our **market abuse** thesis. Retail trading of options by "self-directed" investors, the gamification of the platforms, and the payments for the retail options order flow are subjects for a separate probe and commenters.

Where are the safeguards (e.g., bars against complex products, position limits, or disclosures) to protect the cash markets from **abusive** derivative market behavior? If the Securities and Exchange Commission and the Commodity Futures Trading Commission won't address the **market abuse** that is destroying investor confidence, then the Federal Reserve should step in. Afterall, it was the big banks that were exposed naked by the Archegos caper. If the Fed won't impose some restraints on **abusive** market practices (e.g., lending to unregulated and unsupervised players like Archegos, creating complex ETNs and ETFs) then it's time to change the laws.

What Can Be Done Now: Bring more timely enforcement cases! How many lives and nest eggs would have been saved by more timely enforcement action against the gamification of options trading? And start now by holding public hearings on a joint industry basis with the SEC and CFTC to probe the dangerous conjunction of conditions where **market abuse** is compromising

[4] Apparent suicide by 20-year-old Robinhood trader who saw a negative $730,000 balance prompts app to make changes, CNN Business, June 20, 2020, https://www.cnn.com/2020/06/19/business/robinhood-suicide-alex-kearns/index.html

the functioning of the cash markets and shattering investor confidence. Such hearings will both aid investor education and should expose those who have been swimming naked.

Very truly yours,

William H. Mohr, Esq. Frank Congemi [Licensed 1986-2022]

[1982-2000 New York Attorney General's Office, including Deputy Chief of the Investor Protection and Securities Bureau; 2000-2002, Counsel to Datek Online Holdings, Inc.; 2000-2002, Member, NASD Online Brokerage Committee; 2002-2006, Broker-Dealer Compliance, Citigroup Global Markets, Inc.; 2006-2018, Global Data Compliance, Citigroup Technology Inc.]