

June 19, 2017

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

Re: Special Notice on Potential Enhancements to Certain Engagement Programs

Dear Ms. Asquith:

Edward Jones appreciates the opportunity to comment on FINRA's Special Notice on current engagement programs. We commend FINRA for seeking feedback on the effectiveness of current programs and initiatives, including committees, rulemaking process and member relations and related programs.

Edward Jones is one of the largest FINRA member firms, serving the investment needs of more than seven million U.S. investors through personalized service provided by more than 14,000 financial advisors. We focus on serving the needs of the serious, long-term individual investor by establishing personal relationships, understanding their needs and implementing tailored solutions.

Edward Jones supports FINRA's effort to enhance member engagement programs to promote its mission and its effectiveness as a Self-Regulatory Organization ("SRO").

Edward Jones commends FINRA for conducting a thorough review of member engagement programs. We believe one of the strengths of SRO regulation is the opportunity for robust engagement with member firms to inform regulatory programs, enhance investor protection and promote market integrity. The SRO model is particularly important in dynamic and rapidly evolving industry sectors, such as financial services, where industry expertise can help inform complex solutions to promote compliance across a range of business models.

We applaud FINRA for steps taken in recent years to improve engagement and transparency with member firms. We believe there are opportunities for further enhancements and trust the comments in this letter will provide constructive feedback and recommendations that will assist FINRA in fulfilling its investor protection mission.

Engagement Through Advisory, Ad Hoc and District Committees

Edward Jones is generally supportive of FINRA's committee structure and appreciates the opportunity to participate on a number of these committees. We believe the committees provide timely opportunities to share feedback on FINRA's regulatory initiatives and programs and share information on industry developments.

We particularly commend FINRA for its increasing willingness to share proposed FAQs and interpretative guidance in addition to rule filings for committee consideration. We believe committee review has meaningfully improved and clarified documents, such as the FAQs associated with FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), promoting member firm compliance and investor protection.

To maximize effectiveness and promote a robust discussion, we recommend FINRA share materials a minimum of a week prior to committee meetings to ensure members have adequate time to review the materials and seek input from other stakeholders in their respective organizations.

With respect to advisory or ad hoc committee governance, Edward Jones generally opposes the election of committee members and the imposition of term limits. Should FINRA consider term limits for advisory or ad hoc committees we recommend time limits no shorter than six years as we believe continuity in committee membership promotes greater trust and expertise among committee members and more robust dialogue with FINRA on regulatory initiatives and programs. We support the current committee selection process whereby FINRA identifies member firms with different business models to ensure a range of perspectives are considered on regulatory initiatives and programs.

Edward Jones believes the typical frequency of committee meetings is appropriate based on the timing of regulatory developments. In order to foster a robust dialogue with FINRA staff we believe it is preferable for these meetings to be held in-person. We also believe the meetings are most effective when FINRA staff is available in-person rather than by video or teleconference.

In order to encourage greater transparency and member firm participation, we believe FINRA should consider publishing information regarding the membership, distinct purpose and mission and agenda for each meeting of the ad hoc, advisory and district committees. We recommend the agendas include rule proposals to be considered by each committee, particularly for committees required to review rule proposals, such as the Compliance Advisory Committee (CAC) and Small Firm Advisory Board (SFAB), to ensure FINRA's membership is generally aware of rulemaking initiatives prior to submission to the FINRA Board of Governors. We do not believe it is necessary to publish notes from these meetings, but feel it is important for FINRA member firms to have awareness and



a general familiarity of the purpose, function, roster and rulemaking initiatives considered by these committees.

Finally, we recommend FINRA develop a member engagement report that is readily available to document committee participation from each member firm. It has been our experience that such reports are beneficial in helping the firm periodically reassess the personnel on these committees to ensure, as roles and responsibilities change, we continue to provide the right subject matter expertise for each committee.

#### Engagement in Connection with FINRA Rulemaking

Edward Jones appreciates ongoing steps FINRA has taken to enhance transparency and engagement in the rulemaking process. We believe Regulatory Notices are generally well-written and commend FINRA for providing specific questions to help guide and better-inform comment letters. We also recommend FINRA consider publishing a regulatory agenda, similar to those published by federal agencies, in order for member firms to have a better understanding of FINRA's prioritization of future rulemaking and regulatory initiatives.

Edward Jones believes the rulemaking process could be further improved by posting a link from the Regulatory Notice's web page to the FINRA rule filing to provide greater clarity and understanding of FINRA's responses to comments received. We also support the posting a link to FINRA's response to comments received from the SEC to gain a better understanding of why comments were or were not incorporated into the final rule. We would also recommend FINRA prominently post updates when the SEC requests additional time to review rule proposals so member firms can readily identify the status of a rule filing. We believe the typical 45-day comment period provided by Regulatory Notices is sufficient, but strongly urge FINRA to consider the complexity of a rule filing when determining the appropriate time period for comments.

FINRA's retrospective rule review process is an area where we believe there is opportunity for improved transparency and effectiveness. Our experience has been that a number of rules have been raised for retrospective review through committee deliberations or other channels, but there is insufficient transparency around FINRA's process for review and consideration of these requests. We commend FINRA CEO Robert Cook for his interest in this area and efforts to date to proactively update rules, such as the modernization of the registration rules. We believe FINRA should initiate a more formalized process by which they seek member firm input on rule reviews and share more detailed information about FINRA's evaluation of the efficacy and effectiveness of the rule and

determination about whether a rule continues to meet its original objective or should be moved forward in the retrospective rule review process.

#### FINRA's Regulatory Guidance

We commend FINRA for seeking to provide more interpretative guidance and FAQs to member firms. We caution that these interpretations and FAQs must be carefully vetted so as to not inadvertently become de facto rules that have not gone through the notice and comment process. We believe the use of these approaches to provide additional regulatory guidance is beneficial to provide additional clarity and certainty to promote compliance by member firms. We recommend FINRA ensure this interpretative guidance and FAQs are linked to related Regulatory Notices and rules and consider establishing a page where this information is chronologically posted similar to the respective pages for Regulatory Notices and rule filings currently.

We have also noted a few situations where FAQs are updated or supplemented without notice and communication from FINRA. We would strongly encourage FINRA to communicate these changes through the Weekly Update or other mechanism to ensure member firms are aware of and relying upon current regulatory guidance.

FINRA's regulatory coordinators have become an important point of contact for seeking and receiving regulatory guidance. While we have generally had a positive experience working with our various regulatory coordinators, we have encountered situations where we have experienced inconsistencies in the feedback received. In order to memorialize feedback received we have increasingly requested written guidance when seeking clarification on application of rules. We believe member firms would benefit from a better understanding of how to utilize regulatory coordinators to ensure guidance received can be relied upon by the firm.

#### Engagement Through Member Relations, Education and Compliance Resources

We applaud FINRA's Member Relations area for the range of programs offered, including conferences, roundtables and firm meetings with member firms. We believe these programs provide important opportunities for open and effective dialogue with member firms to inform FINRA's regulatory programs and initiatives and promote compliance throughout the industry. We believe FINRA has made progress in enhancing these programs, through improved content and the offering of different learning tracks based on the size of firms, but would ask FINRA to continue exploring opportunities, where possible, to enhance the relevance of these programs for the smallest broker-dealers to the largest member firms. We also find FINRA's webinars and a "few minutes with FINRA



series" helpful, but would emphasize the importance of providing insights beyond published guidance.

We commend FINRA for enhancements to the Firm Gateway. The functionality of this system has been significantly improved in recent years to promote the secure transmission of documents and other responsive materials to information requests. Given the enhancements to the Firm Gateway, we strongly recommend that FINRA direct all information requests through this system. We continue to receive information requests through other media, including e-mails and telephone calls, which create challenges in assigning and tracking responses.

We have also observed that many of the requests submitted outside of the Firm Gateway specify shorter response times of as little as seven days, rather than the standard 14-days, resulting in challenges prioritizing, assessing and completing the responses. We recognize that some matters are very time sensitive as a result of market events or the nature of claims alleged, but recommend FINRA, where possible, consistently utilize the Firm Gateway to facilitate timely and complete responses and greater transparency in tracking requests.

One additional enhancement to the Firm Gateway we believe will benefit FINRA exam teams and member firms, is separating or clearly identifying information requests from FinOp and Sales Practice exam team members during firm examinations. The number of information requests received during firm exams is quite voluminous and the firm has experienced challenges, at times, in identifying which exam team or team member to contact in order to discuss information requests.

#### Information on FINRA Board Activities

We commend FINRA for enhancing communication and transparency with respect to the Board's activities. We find the pre and post-Board meeting notifications of rulemaking under consideration to be particularly informative. We believe the video updates complement this effort, but would emphasize using these videos to provide additional context and insights as to Board activities and rulemaking under consideration beyond published notifications.

Finally, we would encourage FINRA to post additional information regarding Board Governors. We believe it would be reassuring to the investing public, member firms and other stakeholders to see the diversity of backgrounds and the quality of qualifications of the Board Governors.

#### Information on Examination and Enforcement Programs

We recognize the primary focus of this section is on effectiveness of FINRA's communication of examination and enforcement initiatives and findings, but offer a couple of more fundamental points for FINRA's consideration. We believe it is critically important that FINRA not engage in rulemaking by enforcement. We rely upon the clarity and certainty of FINRA rules and related regulatory guidance in designing compliance programs. When FINRA stakes out new policy positions through enforcement actions, it creates ambiguity and uncertainty and presents significant challenges in developing well-designed compliance programs.

Related, we have also experienced situations where FINRA appears to blur the lines between rules and regulatory notices and guidance. We benefit greatly from the additional regulatory guidance provided by FINRA, but believe a clear distinction must be drawn when FINRA considers an enforcement action based on regulatory guidance rather than a member firm's application of a rule.

We commend FINRA for its continued efforts to enhance the Annual Priorities Letter. Our experience has been that the substance and timing of issuance has improved and the document has become an important resource in informing our compliance and supervisory programs.

While not specifically requested, we would encourage FINRA to reevaluate the effectiveness of the Risk Control Assessment (RCA). We support FINRA's efforts to gain a better understanding of member firm's business profiles and conduct more risk-based examinations and believe important refinements have been made to the RCA to minimize compliance burdens. We particularly commend FINRA for pre-populating prior year responses and greater customization of the length of the survey based on member firms size and complexity. However, we believe further changes should be made to promote additional customization and flexibility based on member firm activities, products and services offered and customers served.

In order to further enhance the utility of the RCA and encourage greater member firm participation, we also recommend FINRA enhance the Risk Intelligence report provided to participating firms. We believe more detailed trend analysis and leading practices on peer firms of similar size and business model would be helpful in assessing potential risks, evaluating supervisory controls and further informing compliance and supervision programs and business activities.

#### Information Regarding Dispute Resolution Programs

We commend FINRA for providing the Discovery Guide to promote transparency as to which documents parties should exchange without arbitrator or staff intervention. We believe, however, that the costs and burdens of production can



be reduced by focusing on the relevance of the documents requested. For example, consideration should be given to the accounts or transactions in question, time period at issue and claims alleged when determining relevance.

Should FINRA move towards a standard of production of relevant documents versus all documents, we would support preserving arbitrators' authority to determine if certain documents are relevant or likely to lead to relevant evidence and order production of said documents. We also believe arbitrators should have the authority to consider whether there are alternatives that can lessen the impact, such as narrowing the time frame or scope of unnecessarily broad requests, determining whether another document can provide the same information, or ordering a different form of production.

Conclusion

Edward Jones appreciates the opportunity to provide comments on the effectiveness of FINRA's member engagement programs and initiatives, including committees, rulemaking process, member relations and related programs. We commend FINRA for improvements to member engagement and transparency and trust the comments in this letter will provide the opportunity for further enhancements that will assist FINRA in fulfilling its investor protection mission.

If you have any questions regarding the comments contained in this letter please contact me at 314-515-9711.

Sincerely,



Jesse Hill

Principal – Legal – Government and Regulatory Relations