



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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Submitted electronically to pubcom@finra.org.

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

RE: Special Notice – Engagement Initiative

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ we appreciate the opportunity to submit the following comments in response to the March 21, 2017, Special Notice – Engagement Initiative (the “Special Notice”) published by FINRA.² We applaud the introspective FINRA360 initiative, of which the Special Notice is a part, and applaud FINRA’s engagement process to evaluate what is working well, and what may need improvement.

NASAA has a longstanding, multifaceted collaborative regulatory relationship with FINRA. This relationship stems in part from the fact that NASAA members regulate FINRA-registered broker-dealers and agents. Over 30 years ago, NASAA worked closely with FINRA’s predecessor, the NASD, to develop the Central Registration Depository (“CRD”) system. Since inception, CRD system operations have been overseen by a steering committee jointly chaired by NASAA and FINRA representatives. NASAA’s U.S. members and FINRA use the CRD system to manage broker-dealer and agent registrations, with standard forms updated periodically through a joint process involving NASAA and FINRA representatives. FINRA also serves as a vendor to NASAA with respect to the Investment Adviser Registration Depository (“IARD”) system, a representative of the FINRA Investor Education Foundation participates on NASAA’s Senior Advisory Council, and staff from NASAA members participate on the Securities Industry/Regulatory Council on Continuing Education. We look forward to continued engagement with FINRA on these and other issues in the future.

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as a forum for these regulators to work with each other to protect investors at the grassroots level and promote fair and open capital markets.

² Special Notice – Engagement Initiative (March 21, 2017), available at <http://www.finra.org/industry/special-notice-032117>.

Discussed below are points of interest and improvement opportunities in response to the Special Notice. As a self-regulatory organization, FINRA plays an important role in policing misconduct in the brokerage industry. We know the FINRA Board of Governors will keep investor protection at the forefront as the Board considers any potential changes to FINRA's regulations, operations or policies arising from FINRA360.

FINRA's Programs for Industry and Public Engagement – Advisory, Ad Hoc, and District Committees

The Special Notice discusses the roles of FINRA's sixteen advisory committees, six current ad hoc committees, and eleven district committees. It notes that the advisory committees are composed of over 160 industry members and 35 non-industry members.

We encourage FINRA to increase the non-industry membership on FINRA's committees. Several committees would benefit from increased non-industry participation, especially those without non-industry members. Expanding the diversity of voices across FINRA's advisory, ad hoc and district committees is particularly warranted given recent regulatory trends towards greater consistency across broker-dealer, investment adviser and insurance regulation. Furthermore, FINRA should consider whether membership on one or more committees by a state securities regulator would be provident.

For example, the Independent Dealer/Insurance Affiliate Committee is a member-only committee that advises on matters relating to independent contractor firms and insurance company-affiliated broker-dealers that provide comprehensive financial services (typically involving non-proprietary products). This committee would appear, therefore, to address issues such as "franchise" broker-dealers, a significant regulatory problem in the past, which state securities regulators also address. Where there are committees that govern areas of mutual concern and experience, broader representation beyond just the broker-dealer industry would be both efficient and effective.

With respect to certain of the committees, NASAA raises the following further considerations.

- **Investor Issues Committee:** The committee advises, in large part, on proposed FINRA rulemaking and policy initiatives that may significantly affect individual and institutional investors. The interests and concerns of a typical retail investor and of a typical institutional investor often align, but they are not one and the same. Retail investors generally require different services from a broker than do institutional investors and have less resources and capacity to assess investment risks. Given these very different starting points, FINRA should consider separating the Investor Issues Committee into two advisory committees, one each for retail and institutional investors. Bifurcating these roles would ensure that the FINRA Board of Governors hears potentially competing voices from retail and institutional investor

advocates and that any differences are not quieted at the advisory committee level.

- **Regulatory Advisory Committee:** The committee's primary purpose is to consider and comment on all major regulatory initiatives and rule proposals before they are presented to the FINRA Board of Governors. The workings of this committee and its relationship to the overall FINRA rulemaking process, however, are somewhat unclear. In the interests of greater transparency, FINRA should explain the role of this committee, including the extent to which FINRA staff or the Board of Governors must consider its comments and how any differences of opinion are resolved.
- **Complaints Initiatives Committee:** The committee provides advice on issues and trends related to Rule 4530 reporting, including the provision of statistical and summary information of written customer complaints. NASAA encourages FINRA to expand access to Rule 4530 reports to state securities regulators. Rule 4530 reports provide additional timely information about FINRA member firms and registered persons beyond what is available to governmental authorities through Forms BD, U4 and U5. By not providing access to governmental regulators, FINRA's Rule 4530 opens a reporting gap, including in critical instances involving "potential widespread impact to the [broker-dealer], its customers, or the markets."³ Providing state securities regulators with access to Rule 4530 reports would close this gap, as would including direct participation by NASAA or one of its members on this committee.

In addition, in response to two specific requests in the Special Notice, NASAA provides the following comments.

- *Are there additional areas not addressed by existing committees where FINRA should obtain periodic input? If so, would a new advisory or ad hoc committee be an appropriate vehicle for obtaining that advice? Are there any existing advisory or ad hoc committees that should be disbanded or consolidated?*

To the extent that FINRA has a committee (or forms a committee) that evaluates matters related to anti-money laundering or statutory disqualification issues, NASAA would encourage collaboration on these issues between FINRA's committee(s) and state regulators.

Strong anti-money laundering programs help protect the financial stability and reputation of broker-dealers. These considerations are also important for investors who rely on these firms to help manage their money. Robust anti-money laundering procedures protect the public

³ See FINRA Rule 4530.

interest and act as a customer safeguard. Therefore, NASAA encourages FINRA to create a committee to address these issues and to include state regulators in an ongoing manner regarding FINRA's efforts to prevent money laundering.

In addition, statutory disqualification for broker-dealer agents is another issue that routinely affects state securities regulators, as state actions frequently form the basis for a disqualification. NASAA has discussed this issue with FINRA in the past and we continue to address these issues as they arise. Our members would benefit from further engagement with FINRA staff on both the development and the application of rules governing statutory disqualifications.

- *If you have been a member of any of FINRA's committees, what has been your experience serving on that committee? Is appropriate information provided to the committee to facilitate meaningful discussion and input into FINRA's operations and programs? What changes to the operation of that committee might enable it to have more meaningful discussion and input into FINRA's operations and programs?*

NASAA members participate alongside industry representatives on the Licensing and Registration Council (the "LRC"), one of FINRA's ad hoc committees. The LRC provides state securities regulators an opportunity to engage with registration staff at FINRA member firms and identify potentially systemic licensing and registration issues. NASAA values this participation and we believe it results in smoother regulatory processes for FINRA members.

As noted above, NASAA members also participate in the Securities Industry/Regulatory Council on Continuing Education which, in conjunction with FINRA, administers the continuing education program for broker-dealers and their agents. The state regulatory perspective is critical to the mission of the Council. Their voice is that of the local "cop on the beat" whose priority is the protection of Main Street investors. We look forward to continuing to be a part of this Council and its important work.

FINRA Rulemaking Process and Retrospective Reviews

As indicated above, NASAA encourages FINRA to shed greater light on FINRA's rulemaking process. We also would like to see increased communication specifically between NASAA and FINRA staff prior to the release of new FINRA rule proposals. Like the members of the Regulatory Advisory Committee, NASAA members possess substantial relevant expertise and could assist FINRA earlier in FINRA's rulemaking process. As it stands now, however,

NASAA generally learns of pending FINRA regulatory proposals only through the regular public notice and comment period process and misses the opportunity to provide meaningful input at the proposal development stage. Nonetheless, we do believe FINRA's overall rulemaking process provides opportunities for input from all potential constituencies.

Examination and Enforcement Programs

NASAA recently surveyed our members' opinions on the effectiveness of their overall relationships with FINRA. NASAA members reported having favorable relationships with FINRA (scoring these relationships an average of 7.43 out of 10) and many indicated these relationships have improved recently. NASAA members identified the periodic conference calls held with staff from FINRA's various district offices as effective vehicles for information sharing and relationship building.

These collaborative processes, unfortunately, tend to provoke potential state actor considerations. NASAA recognizes and appreciates the sensitivity of this issue and that FINRA's role as a self-regulatory organization necessarily constrains its freedom to collaborate with governmental agencies. Nonetheless, we believe greater collaboration between FINRA and NASAA is reasonably possible and that this is important to a cohesive regulatory structure.

FINRA, without raising state actor issues, could benefit its members by disseminating documents prepared by NASAA or its members reflecting state regulatory initiatives, broadly relevant examination findings and enforcement priorities, or similar information. NASAA members reported that FINRA rarely asks for this type of material from them. This information would not implicate state actor concerns for FINRA and it would serve to strengthen the collaborative relationship with state regulators. We would also urge FINRA to continue to explore opportunities to collaborate with state regulators on investigations, enforcement matters, and emerging trends. Leveraging our collective resources better serves and protects investors.

Dispute Resolution Programs

NASAA has had a longstanding policy of opposing mandatory pre-dispute arbitration clauses in account opening agreements between financial services firms and their customers. As essentially a contract of adhesion, account opening agreements routinely disadvantage retail investors, especially with respect to issues of dispute resolution. We remain unbowed in our opposition to pre-dispute arbitration clauses; we stand ready to work with FINRA to revisit this issue to give investors a real choice when it comes to resolving disputes with their broker-dealers and agents.⁴

⁴ E.g., Testimony of Melanie Senter Lubin, *A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs*, U.S. House of Representatives Committee on Financial Services (April 28, 2017), available at <http://www.nasaa.org/41990/legislative-proposal-create-hope-opportunity-investors-consumers-entrepreneurs-2/>; Letter from Mike Rothman to Hon. Keith Ellison Regarding the Investor Choice Act of 2017 (Jan. 30, 2017), available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2013/10/NASAA-letter-to-Rep.-Keith-Ellison-Re-Investor-Choice-Act-of-2017.pdf>; Letter from A. Heath Abshire to Sen. Al Franken Regarding the Arbitration Fairness Act of 2013 (May 20, 2013), available at <http://www.nasaa.org/wp->

On another subject, we appreciate the FINRA Board of Governors' recent attention to the problem of unpaid arbitration awards.⁵ Despite best intentions, the proposals authorized by the Board, even if implemented as described, would not resolve the problem investors face when they win an arbitration award which will never be paid. NASAA and its members continue to focus on this problem of significant investor harm, and we look forward to working with FINRA and regulated entities to implement measures that will resolve this issue once and for all.

Other Communications, News and Reporting Information Resources

Last, I would note that the Special Notice indicates FINRA's senior helpline received 18,414 calls in 2016 while FINRA's investor complaint center received just 622. This imbalance would appear to indicate that the investor complaint center is underutilized. That issue aside, in many instances, the calls or inquiries coming to either the senior helpline or complaint center involve products or persons not subject to FINRA's jurisdiction and for whom FINRA cannot offer direct assistance. It would be more efficient for callers to go directly to the appropriate regulator with jurisdiction over the person and products about which the person is calling. We would encourage FINRA to revise the information on its website regarding these complaint resources to make sure individuals reach the appropriate regulator in an efficient manner as possible. As with other areas of mutual concern and interest, we are would be happy to collaborate with FINRA in this endeavor.

I hope this letter provides helpful information. NASAA welcomes an opportunity to discuss these issues further. If you have any questions about these comments, please contact NASAA's General Counsel, A. Valerie Mirko, at vm@nasaa.org or (202) 737-0900.

Sincerely,



Mike Rothman
NASAA President
Minnesota Commissioner of Commerce

[content/uploads/2011/07/NASAA-Letter-Supporting-AFA-Sen-A-Franken-May-2013.pdf](http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Letter-Supporting-AFA-Sen-A-Franken-May-2013.pdf); Letter from Rex Staples to Elizabeth Murphy Regarding PIABA Rule Proposal (Aug. 17, 2009), available at http://www.nasaa.org/wp-content/uploads/2011/07/25-PIABA_Rule_Petition_082109.pdf.

⁵ See Update: FINRA Board of Governors Meeting (May 11, 2017), available at <http://www.finra.org/industry/update-finra-board-governors-meeting-051017>.