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Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, D.C. 20006-1506
Via email to pubcom@finra.org

Re: FINRA Regulatory Notice 20-05 Continuing Education Program Transformation ("RN 20-05")

Dear Ms. Mitchell:

PFS Investments, Inc. ("PFSI"), a registered broker-dealer and investment adviser, appreciates the opportunity to comment on the proposed enhancements to the securities industry continuing education program ("CE Program") as set forth in the above notice.[1] Although PFSI fully supports a robust continuing education requirement for securities industry professionals, we strongly oppose the proposal to increase the frequency of the Regulatory Element and limit our comments to that issue. For the reasons discussed below, we are concerned that the burden of switching to an annual Regulatory Element will largely fall on the most economically vulnerable in our society.

PFSI is a wholly-owned subsidiary of Primerica, Inc. (NYSE: PRI). As a registered broker-dealer, we primarily serve the middle-income market by offering high quality mutual funds and variable annuities to our clients in all fifty states and Puerto Rico. We have over 18,500 independent contractor representatives with Series 6 and 63 FINRA registrations, and over 3,700 branch office supervisors who also hold the Series 26 principal's registration. Our representatives serve the communities where they live and work, and, in normal times, meet with clients in their homes, face-to-face "across the kitchen table." We educate our customers about the long-term benefits of dollar-cost averaging through systematic investing into a diversified investment portfolio, and the need to save for retirement.

In September 2018, the Securities Industry / Regulatory Council on Continuing Education ("CE Council") published a document explaining its plan to enhance the current CE Program.[2] With respect to the Regulatory Element, the CE Council stated that it seeks to increase the relevance of content that most individuals receive and expressed concern that the current frequency of the program, essentially once every three years, was an obstacle to providing timely regulatory training on rule changes and industry regulatory issues. The CE Council recommended that the

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[1] See *"FINRA Regulatory Notice 20-05 Continuing Education Program Transformation"* (February 18, 2020); available at www.finra.org/industry/notices/20-05.

[2] See *"Enhancements Under Consideration for the Securities Industry Continuing Education Program"*, Securities Industry / Regulatory Council on Continuing Education (September 6, 2018), available at www.cecouncil.org.

frequency of the Regulatory Element be increased to an every year program, and that the scope of the material covered in the program be narrowed from "regulatory requirements and industry standards" to "*impactful* rule changes and *significant* industry regulatory issues (emphasis added)."[3] With respect to determining content from year-to-year, the CE Council explained that it would, in consultation with FINRA, analyze the scope of recent rule changes and regulatory issues to determine which topics to address in each Regulatory Element program.[4] A year later, in September 2019, the CE Council published its final recommendations to the securities industry for the enhancement of the CE Program. The CE Council maintained its recommendations to narrow the scope of the material covered in the program and to make the Regulatory Element an annual program.[5]

In RN 20-05, FINRA has requested comments on the CE Council's final recommendations. The notice lists nine questions on which FINRA specifically requests comment. We limit our comments to question number 2, which reads as follows:

> *2. Would the transition to an annual Regulatory Element requirement or the focus on rule changes and significant regulatory issues relevant to each registration category disparately impact specific populations? If so, would the introduction of greater diversity in instructional formats and delivery modes alleviate any such potential impacts?*

Based on the research that follows we believe it is clear that the transition to an annual Regulatory Element will have a disparate impact on certain populations. Also, we question whether there will be enough content under the new narrower focus to justify an annual Regulatory Element for Series 6 representatives.

Transition to An Annual Regulatory Element

As you know, the on-line Regulatory Element requires a high-speed internet connection and is not available to smartphones.[6] Those populations that demonstrate below average occurrences of broadband internet connections at home will shoulder a much greater portion of the burden imposed by increasing the frequency of the Regulatory Element. Instead of having to seek out an acceptable place outside the home to complete the program once every three years, those without broadband at home would have to do so on an annual basis, making it much harder for them to maintain a FINRA registration. Moreover, during state-wide "stay-at-home" orders instituted to slow the spread of disease during a pandemic, as have been in effect across the country recently, those industry participants without broadband at home would be completely cut-off from fulfilling their regulatory requirements. Despite the obvious progress the U.S. has made in building out its internet infrastructure, as recently as November 2019, Microsoft estimated there

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[3] Id. at pg. 4

[4] Id. at pg. 4

[5] The final recommendations of the CE Council are available on its website at www.cecouncil.org (click on "The Council").

[6] See www.finra.org (click on "Continuing Education", then "LEARN MORE ABOUT CE ONLINE", and then "Technical Support and Troubleshooting"); RN 20-05 at pg. 3.

were still 157.3 million people in the U.S. that don't use the internet at broadband speeds.[7] The Pew Research Center has studied in detail the U.S. population that doesn't have access to broadband.

According to its website, the Pew Research Center ("Center") is a nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping the world." It "conducts public opinion polling, demographic research, content analysis, and other data-driven social science research."[8] The Center is well-known and often cited for its work on the *digital divide* that still exists in the U.S., where minorities and low-income Americans are beset by lower than average rates of broadband internet access that threaten their economic opportunities.[9] In June 2019, the Center published a study on U.S. broadband usage titled "Mobile Technology and Home Broadband 2019 ("Pew Report").[10] The study was based on telephone interviews conducted from January 8th to February 7th, 2019, among a national sample of 1,502 adults, 18 years of age or older, living in all 50 states and the District of Columbia. The Center's findings are particularly relevant to the CE Council's recommendation to increase the frequency of the Regulatory Element from every three years to annually. The Pew Report shows that increasing the frequency of the Regulatory Element from every three years to every year will have a disparate impact on African Americans and Hispanics, those that live in rural areas, and others, making it much harder for these persons to access the economic opportunities afforded by a FINRA registration.

The Pew Report found that only 73% of U.S. adults have broadband at home, which means that more than 1 out of every 4 U.S. adults would ***not*** be able to access the Regulatory Element from the comfort of their home.[11] Who are the 27% of U.S. adults that don't have broadband at home? The report indicates that there are four groups of adults that comprise most of this 27%, which are the following:

- African Americans and Hispanics: African Americans and Hispanics have significantly fewer broadband connections at home than Whites, as 79% of Whites have a broadband

[7] See *"Microsoft Airband: An annual update on connecting rural America"*, McKinley (March 5, 2020), available at www.blogs.microsoft.com (click on "Microsoft On the Issues"). The report acknowledges the substantial differences in estimates of those without access to broadband, noting the FCC's estimate of 21 million in its 2019 Broadband Deployment Report, available at www.fcc.gov ("Reports"), and BroadbandNow's February 2020 estimate of 42 million, at www.BroadbandNow.com, and reiterates Microsoft's prior appeal for greater clarity in estimating the number of people in the U.S. without access to broadband. See *"It's time for a new approach to mapping broadband data to better serve Americans"*, Kahan (April 8, 2019) available at www.blogs.microsoft.com. (Note that Kahan and BroadbandNow are highly critical of the FCC's methodology, as is the GAO. See *"FCC's Data Overstate Access, and Tribes Face Barriers Accessing Funding"*, Statement of Mark Goldstein, Director, Physical Infrastructure Issues, U.S. Government Accountability Office, Before the Committee on Indian Affairs, U.S. Senate (October 3, 2018) at www.gao.gov/products/GAO-19-134T).

[8] www.pewresearch.org/about

[9] See e.g. *"Fact Tank: Digital divide persists even as lower-income Americans make gains in tech adoption"*, Anderson and Kumar (May 7, 2019); *"Fact Tank: Digital gap between rural and nonrural America persists"*, Perrin (May 31, 2019); *"Fact Tank: Smartphones help Blacks, Hispanics bridge some – but not all – digital gaps with Whites, Perrin and Turner"* (August 20, 2019), all three available at www.pewresearh.org/fact-tank.

[10] Pew Research Center, June 2019, *"Mobile Technology and Home Broadband 2019"*, at www.pewresearch.org (Internet & Tech).

[11] Pew Report at pg. 4

connection at home, while only 66% of African Americans and 61% of Hispanics do.[12] These findings indicate that there are almost twice as many African Americans and Hispanics, that don't have a broadband connection at home, as there are Whites.[13]

- Rural Adults: Adults living in rural areas have significantly fewer broadband connections at home than adults living in urban and suburban areas, as only 63% of rural adults have a broadband connection at home, compared to 75% of urban adults and 79% of suburban adults.[14] Here again the Pew Report indicates that there are almost twice as many adults living in rural areas that don't have a broadband connection at home, as those living in urban and suburban areas.
- Adults Age 65 and Older: Adults age 65 and older have substantially fewer broadband connections at home, as only 53% of them have home broadband, compared to 79% of those age 50 to 64, and 77% of those age 18 to 49.[15] These numbers mean that only slightly more than half of adults age 65 would be able to access the Regulatory Element from home.
- Adults With Annual Household Income < $30,000: Only 56% of adults with annual household incomes less than $30,000 have a broadband connection at home, compared to 78% of adults with incomes from $30,000 to $74,999, and 92% of adults with annual household incomes of $75,000 or more.[16] Unfortunately, having a broadband connection at home seems closely tied to income, as less than 6 out of 10 adults with annual household incomes of less than $30,000 per year have broadband at home.

The Pew Report shows that if the frequency of the Regulatory Element is changed from every three years to annually, this change will have a disparate impact on African Americans and Hispanics, those living in rural areas, those age 65 and older, and those with annual household incomes less than $30,000, due to their reduced instances of broadband connections at home. Furthermore, the Pew Report indicates that there is not likely to be any significant improvement in these numbers anytime soon as fully 80% of these non-broadband users say they are not interested in getting high-speed internet at home.[17] Unless FINRA reconsiders its current course, it is about to make it much harder for the above populations to have a career in the securities industry.

The Pew Report also looked at smartphone ownership and confirms what is evident to all of us in our daily lives, which is that there is an on-going shift to smartphones and mobile technology to access the internet. Acknowledging this shift, and making the Regulatory Element

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[12] Pew Report at pg. 4 (chart)

[13] As concerning as these numbers are, those regarding ownership of a desktop or laptop computer are even more so. According to another Pew publication that analyzed information from the same survey, 82% of Whites say they have a desktop or laptop computer at home, while only 58% of African Americans and 57% of Hispanics do. See *"Fact Tank: Smartphones help Blacks, Hispanics bridge some – but not all – digital gaps with Whites,"* Perrin and Turner (August 20, 2019). Because these numbers are lower than the number of African Americans and Hispanics that have home broadband, it suggests that some African Americans and Hispanics are obtaining broadband connections at home to use with tablet computers, smartphones or other devices. Note that the Regulatory Element is accessible by tablets. Infra at fn. 6.

[14] Pew Report at pg. 4 (chart)

[15] Id. at pg. 4 (chart)

[16] Id. at pg. 4 (chart)

[17] Id. at pg. 3

also accessible by smartphones, would alleviate much of the burden placed on the four groups identified above, as three of the four have higher incidences of smartphone ownership than broadband at home. According to the Pew Report, 81% of U.S. adults now have a smartphone, which is eight percentage points higher than the 73% that have broadband at home.[18] And smartphone ownership is more prevalent than broadband at home in each ethnic class. The Center found that 82% of Whites have smartphones, as well as 80% of African Americans and 79% of Hispanics, which are much higher occurrences than the 66% and 61% of those groups that have broadband at home.[19] With respect to geographical location, 71% of rural adults have a smartphone, as do 83% of urban and suburban adults.[20] That 71% of smartphone ownership by rural adults, is eight points higher than the 63% of them that have broadband at home. Also, Pew found that smartphone ownership is more prevalent than broadband at home in every economic class. According to the report, in households earning $75,000 or more per year, 95% of adults have a smartphone, while only 92% of adults say they have broadband at home. For households earning $30,000 to $74,999, 83% of adults have a smartphone, while only 79% have broadband at home, and for households earning less than $30,000, 71% of adults have a smartphone, but only 56% have broadband at home.[21] Adults 65 and older is the only one of the four groups identified above where the addition of smartphone accessibility would not result in a gain in coverage. Only 53% of adults 65 and older currently have a smartphone, compared to the 59% that have broadband at home. But the addition of smartphone accessibility would achieve much greater coverage in two of the other age groups. Pew found that 79% of adults ages 50 – 64 have a smartphone, which is equal to the percent that have broadband at home, but 92% of adults ages 30 – 49, and 96% of adults ages 18 – 29, have smartphones, compared to only 77% of adults in both groups that have broadband at home.[22] That's a 15 point gain in coverage for adults ages 30 – 49, and a 19 point gain for adults ages 18 – 29, for a total 34 point gain in total population coverage just by making the Regulatory Element accessible by smartphones.

In light of the ongoing shift to smartphone technology to access the internet, it would be irresponsible for FINRA to impose on the industry an annual Regulatory Element that was not accessible by smartphones. Doing so would have a disparate impact on African American and Hispanic adults, adults that live in rural areas, adults age 65 and older and those that make less than $30,000 in annual household income. Much of that hardship can be avoided, and greater overall coverage gained, by making the Regulatory Element accessible by smartphones before any change to the frequency of the program occurs.

Focus on Impactful Rule Changes and Significant Regulatory Issues Relevant to Each Registration Category

In addition, we think that simultaneously narrowing the focus of the Regulatory Element while increasing its frequency, will make it much harder to maintain the relevancy of the content for Series 6 representatives. We question whether there will be sufficient "impactful rule changes

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[18] Id. at pg. 3 (chart)
[19] Id. at pg. 3 (chart)
[20] Id. at pg. 3 (chart)
[21] Id. at pg. 3 (chart)
[22] Id. at pg. 3 (chart)

and significant regulatory issues" relevant to a mutual funds and variable contracts business occurring on an annual basis to justify the CE Council's recommendation to switch to an annual Regulatory Element for Series 6 representatives. For example, based on the time allotted to take the Series 6 and 7 exams, and the number of questions on each, we estimate that the material covered on the Series 6 exam is just about 40% of that covered on the Series 7 general securities exam.[23] It follows then that a reasonable estimate of the number of "impactful rule changes and significant regulatory issues" that will affect a mutual fund and variable contracts business is also 40% or only 4 out of every 10. If less than half of the "impactful rule changes and significant regulatory issues" will be relevant to a Series 6 business, then it seems to be an unnecessary overreach to make a Series 6 representative take the Regulatory Element as often as a Series 7 general securities representative. If our estimate is reasonably accurate, then making Series 6 representatives take the Regulatory Element every year will turn out to be counterproductive, as representatives realize they often repeat content from prior years due to the lack of new material. In order to not inflict an unnecessary burden on Series 6 representatives, we submit that the Regulatory Element for Series 6 representatives should be administered no more frequently than every other year, but only after the program has been made accessible by smartphones.

We greatly appreciate the opportunity to comment on the proposed enhancements to the securities industry continuing education program. We urge you to reconsider the CE Council's recommendation to make the Regulatory Element an annual program in light of the information set forth above. Implementing that recommendation with a program that is not accessible by smartphones will have a disparate impact on African American and Hispanic adults, adults that live in rural areas, adults age 65 and older, and those that make less than $30,000 in annual household income. Finally, Series 6 representatives, that are authorized to recommend only mutual funds and variable products, and therefore, are only concerned with rule changes and regulatory issues that affect that limited line of business, should not be required to take the Regulatory Element as often as a Series 7 general securities representative.

We hope you find these comments helpful. Please don't hesitate to contact the undersigned if you would like to discuss the contents of this letter.

Kindest regards,

John S. Watts
SVP and Chief Counsel
PFS Investments Inc.

[23] Based on the time allotted to take each exam (90 minutes compared to 225), and the number of questions on each (50 compared to 125), it would appear that that the Series 6 exam covers just 40% of the material covered on the Series 7 exam.