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July 14, 2025

By email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 25-07: *Supporting Modern Member Workplaces*

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to Financial Industry Regulatory Authority, Inc. ("FINRA") Regulatory Notice 25-07: *Supporting Modern Member Workplaces* (the "Notice"), which seeks commentary to inform FINRA's "broad review of its regulatory requirements applicable to member firms and associated persons" with a particular focus on "the modern workplace."[2] While NASAA may comment on specific proposals if and when they are issued by FINRA, we offer the following comments to help guide FINRA's review.

I. FINRA's modernization of its rules should be narrow and targeted, and should prioritize investor protection.

The Notice requests comments on an exceptionally broad range of topics, including: FINRA rules and processes related to the qualification, registration, and supervision of firms' workforces; customer communications, disclosures, and recordkeeping; and mechanisms to detect and prevent fraud and financial exploitation in customer accounts. These rules and processes are essential to investor protection and effective regulation of our capital markets. Thus, as we

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] Regulatory Notice 25-07.

explained recently,[3] any changes in this area should be narrow and targeted, and should prioritize investor protection.

The premise of the Notice is that technological advances have induced or influenced changes – or the desire for changes – in firms' business models and practices, as well as investor expectations. However, we continue to believe that FINRA should avoid rule changes that favor certain technologies, products, services, business models, or business practices, or that would otherwise weaken existing safeguards. Instead, FINRA should continue to apply well-established principles to protect investors from qualitatively familiar risks, regardless of the technology used or the preferred business model.

FINRA's efforts should recognize that, while technology can enhance firms' capabilities and expand access to the markets, it is not a panacea for bad human behavior and in fact can both exacerbate preexisting risks and create new ones. For example, as FINRA acknowledges in the Notice, artificial intelligence ("AI") tools can make deepfakes more effective and enable more sophisticated scams.[4] State and federal regulators and law enforcement already see far too many instances of malicious social engineering through the internet, social media, and mobile messaging apps.[5] Poor cyber hygiene or a lack of diligence and vigilance can also make both firms and their customers more vulnerable to malware, phishing, and other kinds of cyber attacks.[6] Thus, FINRA rightly acknowledges in the Notice that "fraud is a significant and growing risk . . . driven by many of the same technologies that have transformed the modern workplace."[7]

However, fraud is not the only concern. The improper use of new technologies by firms that do not fully understand, vet, and test such technologies could have significant unintended consequences as well. AI systems can "hallucinate" and provide inaccurate, false, or misleading

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[3] Letter from Leslie M. Van Buskirk, NASAA President and Administrator, Division of Securities, Wisconsin Department of Financial Institutions, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Re: Regulatory Notice 25-04: *Rule Modernization* and Regulatory Notice 25-06: *Supporting Capital Formation* (June 11, 2025).

[4] *See* Notice at 11 (stating that "[c]riminal perpetrators employ increasingly sophisticated tactics using technology, including AI tools that may make it more difficult for members and investors to identify scams by removing errors or improving the viability of imposter schemes").

[5] *See*, *e.g.*, 2024 NASAA Enforcement Report, 17 (Oct. 22, 2024) ("On the horizon, securities regulators expect to see more impersonation, pyramid, and romance scams involving digital assets and cryptocurrency, and the increased use of crypto ATMs to perpetuate these frauds."); 2023 NASAA Enforcement Report, 10 (Feb. 27, 2024) (discussing "pig butchering" scams); Press Release, SEC, *SEC's Anti-Fraud Public Service Campaign Warns Investors About Relationship Investment Scams* (Apr. 16, 2025); Press Release, CFTC, *CFTC Partners with Federal and Private Groups to Distribute Cryptocurrency Relationship Investment Scam Information* (Sept. 11, 2024).

[6] *See*, *e.g.*, *Voya Fin. Advisors, Inc.*, SEC Rel. No. 34-84288 (Sept. 26, 2018) (finding that firm had deficient policies and procedures, and failed to catch fraudulent password reset requests by individuals impersonating the firm's agents, who used the credentials to obtain more than 5,000 customers' personal identifying information).

[7] Notice at 11.

information that could harm investors.[8] AI systems could also create systemic risk by prompting or promoting herding behavior among end users.[9] FINRA should therefore devote part of its review to determine how to help firms deploy new technologies safely and effectively.

FINRA should also recognize that certain business models pose unique risks. For example, decentralized business models and remote/hybrid work arrangements may pose a greater risk of cybersecurity failures. Preexisting cybersecurity risks can be exacerbated by inadequate bring-your-own-device policies, the use of unsecured Wi-Fi networks, and a lack of direct day-to-day oversight of decentralized branches and offices. Remote agents who may have little contact with central firm management can become lax on issues like updating equipment and software, or observing good cyber hygiene on their home networks. Likewise, firm IT functions may be more vulnerable to social engineering because they have less contact with people who may call for things like password resets.[10] Cybersecurity burdens may be higher for these firms than for those with centralized workforces, requiring more effort and coordination to implement patches and to ensure that their agents and locations have actually completed necessary updates. Additionally, recent changes to Regulation S-P require firms to have incident response programs to deal with unauthorized access to customer information, including procedures for notifying persons affected by the incident within 30 days.[11] The challenge of being able to comply with these obligations increases in decentralized remote environments. FINRA should therefore develop rules to ensure that firms can meet these requirements effectively.

Decentralized and remote/hybrid models also pose greater challenges for supervision.[12] NASAA members continue to have concerns about the remote supervision of agents and oversight of remote supervisors. Remote agents' distance from compliance and supervisory personnel, both in terms of physical distance and normative expectations about privacy in, *e.g.*, a home office, can inhibit close scrutiny and make it easier for these agents to carry out and conceal violations of the securities laws, FINRA rules, or even firm procedures. During branch examinations, state securities regulators regularly spot instances in which a firm's review of supervisory reports and notices is treated as a check-the-box function without adequate scrutiny of the underlying activity. Technology alone is not the cure for this problem, as many of the same technologies that FINRA has touted as enhancing remote supervision can also serve as vehicles to operate outside of firm

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[8] *See* Cade Metz and Karen Weise, *A.I. Is Getting More Powerful, but Its Hallucinations Are Getting Worse*, The New York Times (updated May 6, 2025).

[9] *See* Emma Taggart, '*Market stability at risk' as AI encourages traders to act as a herd*, The Times (U.K.) (Apr. 9, 2025); Zahra Tayeb, *AI will be transformational, but it could also trigger a future financial crisis by promoting herd mentality, SEC chief says*, Business Insider (July 18, 2023).

[10] *See Voya Fin. Advisors*, *supra* note 6.

[11] FINRA, Cybersecurity Advisory – *SEC Amends Regulation S-P Enhancing Protection of Customer Information (Exchange Act Release No. 35193)* (last viewed June 30, 2025).

[12] *See*, *e.g.*, SEC, Staff Legal Bulletin No. 17: Remote Office Supervision (Mar. 19, 2024) ("The supervision of small, remote offices . . . can be especially challenging.").

systems.[13] It can also be more difficult in these environments for supervisors to know, for example, if an agent is engaging in illegal or unauthorized outside business activities or securities transactions because the firm may not have access to the agent's personal devices or systems, and no way to observe the agent conducting business on personal equipment.

FINRA rules, guidance, and processes should continue to address these risks by applying the well-established, well-understood, and enduring standards and principles that regulators have always applied. For example, FINRA rules and guidance should prevent firms from over-relying on technology to supervise their agents. In-person inspection of the locations at which firm business is conducted should remain a core component of a "reasonably designed" supervisory system.[14] Indeed, the more decentralized a firm's business model and the more widely dispersed its workforce, the more robust and detailed its remote supervision requirements should be. Further, it is important that firms develop policies and procedures that are appropriately tailored to meet principles-based cybersecurity and data security requirements, such as Regulation S-P and Regulation S-ID, and that actually address the appropriate risks.[15] Accordingly, firms should reevaluate the reasonableness of their procedures in light of developments and changes in their business, and this reevaluation should be part of the ongoing maintenance requirement under Rule 3110.[16]

FINRA rules should also continue to require that firms make and keep thorough records to enable both effective supervision and effective regulation. In order for firms' recordkeeping practices to be effective, they need to keep up with advances in technology. We agree that recordkeeping requirements should be modernized, but this should not be achieved by loosening requirements. Firms should continue to be held accountable for recordkeeping and supervision of off-channel communications, especially as they increasingly rely on decentralized, remote/hybrid workforces. Instead of asking whether technology has made records more "costly or difficult to capture or retain,"[17] FINRA should be asking whether technology has made certain records so easy to keep that there is no meaningful burden to doing so. For example, as firms, regulators, and the

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[13] *See*, *e.g.*, Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division, to Sherry R. Haywood, Assistant Secretary, SEC, Re: File No. SR-FINRA-2022-021: *Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)*, 2-4 (Dec. 7, 2022). FINRA and the states have encountered similar issues in the context of remote examination proctoring, *see* Letter of Acceptance, Waiver, and Consent No. 2022073741701, *Brandon Autiero, Former General Securities Representative, CRD No. 7331393* ("Autiero AWC") (FINRA, July 12, 2022), which led FINRA to curtail its online accommodations for qualification examinations, *see* Miriam Rozen, *Finra to Sunset Online Testing Options for Most Licensing Exams*, AdvisorHub (May 24, 2023).

[14] *See* FINRA Rule 3110(a).

[15] Press Release, SEC, *SEC: Morgan Stanley Failed to Safeguard Customer Data* (June 7, 2016); Wiley Rein, Alert, *Morgan Stanley Pays $1 Million in Settlement with SEC Over Failure to Protect Customer Data from Insider* (June 9, 2016).

[16] *See* FINRA Rule 3110(b)(7).

[17] Notice at 9, Request for Comment E.1.

investing public increasingly rely on video calls and similar technology, it may be easier for firms to record and retain direct records instead of AI-generated summaries and transcripts.

Moreover, while firms and their customers might benefit from using communication channels that facilitate the creation of AI-generated transcripts and summaries, firms should not be permitted to over-rely on AI. To the extent that firms are required to keep a record of phone or video calls, FINRA should not permit those firms to replace those records with AI-generated transcripts or summaries. If customers are interacting with AI chatbots, firms should be required to keep records of both the prompt (*i.e.*, the customer's question) and the AI-generated response. In other words, a record of one or the other should be deemed *per se* an incomplete record. This is critical because AI-generated responses are sometimes unpredictable and can vary even when the same question is repeated.[18] It is necessary for firms to keep complete records of these interactions, both to enable the firms to identify when tools and systems may be providing unpredictable or inconsistent responses to customers, and to enable regulators and others to hold firms accountable for the advice and information being provided to their customers. In short, while the Notice speaks of new opportunities created by technology, FINRA should also think about new challenges created by technology as part of its review. Finally, if firms intend to rely on dynamic dashboards, reporting, and information displays, they must also embrace technologies that facilitate dynamic information capture. In sum, in order for recordkeeping procedures and systems to be reasonable, they must be calibrated to the nature of the media in question.

II. Changes related to remote supervision and inspections are premature while the Remote Inspections Pilot Program is underway.

In particular, any changes to permit "broader reliance on remote inspections"[19] will be premature as long as the Remote Inspections Pilot Program is underway. One of FINRA's goals for the Pilot Program is to collect data to enable FINRA to assess the effectiveness of remote inspections as it considers whether to recommend to the SEC that some or all of FINRA's pandemic era accommodations should become permanent.[20] NASAA has repeatedly expressed its concerns about the efficacy of remote inspections, the sufficiency of FINRA's justifications for the Pilot Program, the adequacy of the guardrails that FINRA placed around participation in the Pilot Program, and the reliability and probative value of the data being collected to justify what seem to be foregone conclusions about the changes that will be proposed.[21] Although FINRA made

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[18] *See*, *e.g.*, Jihyun Janice Ahn and Wenpeng Yin, *Prompt-Reverse Inconsistency: LLM Self-Inconsistency Beyond Generative Randomness and Prompt Paraphrasing*, arXiv (Preprint, under review) (submitted Apr. 2, 2025) (discussing types of inconsistent responses provided by large language models).

[19] *Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)*, SEC Rel. No. 34-95452, at 16 (Aug. 9, 2022).

[20] *See*, *e.g.*, *id*. at 5-6, 16.

[21] *See* Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division, to Sherry R. Haywood, Assistant Secretary, SEC, Re: File No. SR-FINRA-2023-007: *Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change,*

incremental improvements to the Pilot Program proposal before it was ultimately approved by the SEC, we continue to have the same concerns. Nonetheless, FINRA should be wary of any comments purporting or implying certain conclusions about these questions at this stage. At a minimum, any credible analysis of these issues must wait until the Pilot Program has concluded, on or after June 30, 2027. Any related rule proposals before that date would be based on an incomplete record and therefore premature.

III. FINRA should take care not to undermine essential gatekeeping functions in the registration process or the uniformity that currently exists between FINRA and the states.

Among other topics, the Notice requests comment broadly about the registration process, including uniform registration forms (*i.e.*, Forms U4, U5, BD, BDW, and BR) and initial qualifications for registration, as well as continued qualifications, including FINRA's continuing education program and the Maintaining Qualifications Program ("MQP").[22] Specifically, the Notice asks about: potential changes involving "the registration process and systems and information collected," broadly; "the substance or presentation of the information provided to the public"; alternative "ways for individuals to demonstrate their qualifications" for registration; FINRA's qualification examinations, generally; and FINRA's continuing education program and the MQP.[23] The registration of securities industry firms and individuals, including the initial and ongoing qualifications for registration, are core components of not only state securities laws, but securities regulation broadly. FINRA should take care not to weaken these essential gatekeeping functions or disrupt the uniformity that currently exists between FINRA and the states.

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as Modified by Amendment No. 1, to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision) (Aug. 29, 2023); Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division, to Sherry R. Haywood, Assistant Secretary, SEC, Re: File No. SR-FINRA-2023-007: *Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)* (May 25, 2023); Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division, to Sherry R. Haywood, Assistant Secretary, SEC, Re: File No. SR-FINRA-2022-021: *Notice of Partial Amendment No. 1 to Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)* (Jan. 12, 2023); Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division, to Sherry R. Haywood, Assistant Secretary, SEC, Re: *File No. SR-FINRA-2022-021: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)* (Dec. 7, 2022); Letter from Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, to J. Matthew DeLesDernier, Assistant Secretary, SEC, Re: *File No. SR-FINRA-2022-021: Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) and File No. SR-FINRA-2022-019: Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)* (Aug. 23, 2022).

[22] Although the Notice does not request comment specifically about the structure of the Central Registration Depository ("CRD"), or the manner in which filings are processed and records maintained in CRD, our comments apply equally to any potential changes suggested or later considered in that regard.

[23] *See* Notice at 5-7.

a. FINRA should neither limit the information available about firms and their agents, nor undermine reliance on existing qualification metrics.

Through the registration process, FINRA and state securities regulators serve an important gatekeeper function. The information collected about firms and individuals, including their work histories, disciplinary records, and even disclosures about adverse financial events like bankruptcy, are essential to regulators' ability to fulfill their gatekeeper role. The information collected during the registration process is also important because much of it feeds directly into the critical information provided to the investing public through platforms like BrokerCheck. It is important that investors have access to information about the employment history, disciplinary events, customer disputes, and registration status of the people and firms that they are considering entrusting with their money. NASAA and its members consistently recommend that investors review the background information from state regulators and BrokerCheck before hiring a financial professional.[24]

Qualification examinations protect investors and the markets by providing a mechanism for individuals to demonstrate that they meet the minimum qualifications for registration in the securities industry. Among other things, examinations are useful because they establish and enable individuals to demonstrate that they meet a baseline for competency regarding financial products, regulatory requirements, ethical practices, and other applicable standards. They are also an easy-to-understand signal of this competency to investors. However, examinations are also valuable to identify individuals who may be willing to cut corners or circumvent controls by cheating on their examinations, an offense that can potentially result in a bar from the industry, before they have a chance to harm investors.[25] While both NASAA and FINRA embraced remote examinations as a temporary accommodation during the pandemic, both NASAA and FINRA have since significantly curtailed the availability of remote testing,[26] in part because remote cheating was extremely difficult to detect and eliminate. FINRA should therefore exercise particular caution before proposing any significant changes to the way it administers its qualification examinations.

The information available to both regulators and the public is only as valuable as it is complete. FINRA should therefore avoid limiting the information collected, as at least one commenter has already suggested FINRA do to the definition of "customer complaint."[27] While

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[24] *How to Check Your Broker or Investment Adviser*, NASAA.org ("Resources for U.S. Investors").

[25] *See*, *e.g.*, Autiero AWC, *supra* note 13; Letter of Acceptance, Waiver, and Consent No. 2022073741702, Harris Kausar, Former Associated Person, CRD No. 7262411 (FINRA, July 12, 2022).

[26] *Exam FAQs*, NASAA.org ("Online Testing Update"); *Online Test Delivery FAQ*, FINRA.org ("What are the criteria to take exams other than the SIE online?"); Rozen, *supra* note 13 (noting that "[s]ince its pandemic-triggered accommodations began, however, Finra has issued discipline against eight test-takers based on allegations of cheating").

[27] *See* Letter from Bernard V. Canepa, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, FINRA Office of the Corporate Secretary, Re: Regulatory Notice 25-04: *Rule Modernization* ("SIFMA Letter"), Attachment at 5 (June 11, 2025) (suggesting that FINRA narrow its definition of "complaint" to "complaints: 1) of a verified client; 2) that are clearly directed at the firm; (3) that identify specific

we do not categorically oppose efforts to modernize the scope of customer complaints that FINRA member firms must record and report, this should not be achieved by narrowing the definitions to exclude what could be legitimate customer complaints. As firms increasingly rely on digital platforms and communication channels to interact with their customers, it is easy to predict that customers will use those platforms and channels to express their concerns and grievances. Firms must adapt to that reality when it comes to receiving and assessing customer complaints. Creating barriers that could allow firms to disregard what may be a legitimate customer grievance simply because it does not meet narrow criteria would not help investors. If anything, FINRA should consider expanding the scope of "customer complaints" that must be recorded and reported by revising FINRA Rule 4530.08 to specifically include customers and clients of a firm's agent in the context of an outside activity or securities transaction of which the firm has received notice under the applicable rule.[28] As FINRA recently acknowledged in Regulatory Notice 25-05, the possibility that members of the public might perceive an outside activity or transaction to be part of the firm's services or subject to the firm's oversight is a legitimate and substantive risk that firms need to consider.[29] This change would address that risk and would put firms in a better position to properly oversee their agents' activities. It would also help to ensure that regulators and the public have access to more complete information about financial professionals.

An additional change that FINRA should consider is to shorten the time for firms to file Form U5 when an agent leaves the firm, for any reason. Firms currently have 30 days to file Form U5.[30] This timeframe may have been appropriate when the uniform registration forms were filed on paper, but modern technology has made the process of filing these forms all but trivial. The effect on regulation of the industry is anything but trivial. It is not uncommon for state securities regulators to receive a Form U4 seeking a person's registration with a new firm before the Form U5 is filed by the previous firm. State securities regulators may decide to allow the registration for any number of reasons, including a lack of disclosures, misstatements by the applicant about the circumstances surrounding their departure, or constrained statutory or regulatory deadlines for the state to take action on the application. However, in too many instances, a Form U5 is later filed that indicates, *e.g.*, that the agent was "permitted to resign" or resigned while under investigation by the firm related to potential violations of the securities laws or the firm's policies and procedures. At that point, it is much more burdensome for state securities regulators to take appropriate action to protect investors, such as by imposing heightened supervision or other conditions, or revoking or suspending a registration that should have been denied had the complete record been available at the time of registration. It is also more burdensome on the agent's new firm to implement or respond to such steps after they have onboarded the agent. State securities regulators' experience suggests that shortening the time to file Form U5 would not impose a

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issues; and (4) that request some action and/or compensation" because "social media and other technologies [] have made it more commonplace for people to express dissatisfaction without the desire or expectation of a remedy").

[28] *See* FINRA Rules 3270, 3280; Regulatory Notice 25-05, Attachment A (text of proposed Rule 3290. Outside Activities Requirements).

[29] Regulatory Notice 25-05, 4-6

[30] *Form U5*, FINRA.org ("When Must a Form U5 Be Filed?").

meaningful burden on firms for two reasons. First, it would be implausible to suggest that firms do not have sufficient information at the time of the agent's departure to report, at minimum, the reason(s) for termination. Second, firms routinely respond to information requests by state regulators on short timelines. The potential benefits of such a change – a more efficient registration process and enhanced investor protection from bad actors – significantly outweigh any potential burdens.

Finally, we remain concerned about the impact of expungement on the information available in CRD and BrokerCheck. While FINRA's recent rule changes have improved the procedures surrounding expungements, we maintain that the rules do not go far enough to make expungement an extraordinary remedy, and therefore expungement remains an ongoing threat to the integrity of recordkeeping and public information. FINRA should enhance BrokerCheck by linking arbitration awards, which are currently available separately on FINRA's website,[31] to firms' and agents' profiles, especially if the award grants a request for expungement relief. FINRA should also include a disclaimer on the BrokerCheck web site that the available information might be incomplete because information has been removed from CRD, and that the customer should therefore check with their state securities regulator. This change would help to inform investors about the nature of the information available, when they might be missing certain information, and where they might be able to find missing information.

b. FINRA should take care not to disrupt the uniformity that currently exists between FINRA and the states.

The uniform registration forms, such as Forms U4 and U5, are shared forms that are used by both NASAA members and FINRA. State securities regulators use Forms U4 and U5 to facilitate compliance with state registration requirements. States' use of these forms is not limited to the registration of broker-dealer agents; they are also used for investment adviser representatives. Furthermore, NASAA and its members have worked diligently to promote uniformity regarding qualification examinations. State securities regulators typically accept or require certain FINRA examinations – generally the Securities Industry Essentials ("SIE") and the Series 7 – as prerequisites to registration as a broker-dealer agent and, in some instances, as an investment adviser representative.[32] NASAA has also worked to synchronize with FINRA standards regarding continuing education and the maintenance of examination validity during unregistered periods. Under NASAA's Examination Validity Extension Program, states accept compliance with the MQP to maintain the validity of FINRA examinations during periods in which they might otherwise expire by rule or statute.[33] Additionally, dually-registered persons who are required to comply with NASAA's Model Rule on Investment Adviser Representative Continuing

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31 *Arbitration Awards Online*, FINRA.org.

32 *See*, *e.g.*, NASAA Model Rule: Examination Requirements for Broker-Dealer Agents (Sept. 18, 2022); NASAA Model Rule: Examination Requirements for Investment Adviser Representatives (May 6, 2024).

33 Examination Requirements for Broker-Dealer Agents, *supra* note 32; Examination Requirements for Investment Adviser Representatives, *supra* note 32; NASAA Investment Adviser Representative Examination Validity Extension Program Model Rule (Apr. 17, 2023).

Education ("IAR CE") can rely on compliance with FINRA's continuing education requirements to satisfy the Products and Practices requirement of IAR CE as well.[34]

State securities regulators, therefore, have a direct and substantial interest in the contents of the uniform registration forms and the manner in which they are processed in CRD. The states also have a less direct, but still substantial, interest in how FINRA assesses the initial and continued qualifications of candidates for registration through examinations and continuing education. The uniformity that exists in these forms, systems, and processes makes the system more efficient for FINRA and its member firms. If FINRA believes that changes in these areas might be appropriate, it should coordinate with NASAA's CRD/IARD Forms & Process and CRD/IARD Steering Committees, as well as NASAA's IAR CE Committee, before proposing any changes. Making changes without coordinating with state securities regulators and NASAA could create circumstances in which states can no longer rely, at least solely, on the uniform registration forms, FINRA qualification standards, and FINRA continuing education requirements to provide the information that state regulators need to fulfill their roles. This would not only inhibit uniformity, but also undermine the very efficiencies that FINRA touts in the Notice and that benefit its member firms and their agents.

IV. Additional guidance would enhance the ability of FINRA member firms to detect and prevent fraud.

As we note above, the Notice rightly acknowledges that "fraud is a significant and growing risk . . . driven by many of the same technologies that have transformed the modern workplace."[35] Like FINRA, NASAA and its members are committed to working collaboratively to identify ways to prevent investor harm as scams continue to evolve and become more sophisticated.

The Notice asks how technological advances have helped or hindered members' ability to fight fraud, and what changes FINRA should make to address these impacts. As a general matter, one of the simplest things that FINRA member firms can and should be required to do to prevent fraud and other abuses is to holistically supervise the activities of their agents, including outside activities that are subject to firm approval, supervision, and recordkeeping.[36] NASAA members have observed that some regulated firms are using technological advances to address fraud, including some firms that have begun to explore the use of AI to identify potential fraud. However, we understand from discussion with state securities regulators that some firms have expressed concern that AI tools could erroneously identify legitimate transactions as fraud. False positives could lead to inconvenience for their customers, increased cost to the firm, and potential damage

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[34] NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(b)(6)-CE) (Nov. 24, 2020).

[35] Notice at 11.

[36] *See*, *e.g.*, FINRA Rule 3280; Regulatory Notice 25-05, Attachment A (text of proposed Rule 3290. Outside Activities Requirements). *See also* Letter from Leslie M. Van Buskirk, NASAA President and Administrator, Division of Securities, Wisconsin Department of Financial Institutions, to Jennifer Piorko Mitchell, FINRA Office of the Corporate Secretary, Re: Regulatory Notice 25-05: *Outside Activities* (May 13, 2025).

to the firm's reputation. Therefore, we recommend that FINRA develop guidance regarding the proper use of these technologies for this purpose and firms' supervision of that use.

The Notice also asks whether FINRA should extend the temporary hold period in Rule 2165, citing the concern of some FINRA member firms that the time limits are insufficient to protect customer assets in many instances. We appreciate and understand that adult protective services and other state agencies face challenges when investigating reports of potential financial exploitation, including limited jurisdiction and authorities, bad actors located abroad, and the hesitancy of victims to acknowledge exploitation or assist in the investigation. While rule changes could be appropriate, any proposal to extend the time limit for a temporary hold under Rule 2165 should be firmly backed by objective evidence of its efficacy. The commentary that FINRA receives in response to the Notice may not be specific enough for FINRA to develop a concrete proposal. If that is the case, FINRA should engage in further study to gather evidence to support any recommended or proposed changes.

Finally, FINRA asks whether it should consider any changes to the trusted contact provisions in FINRA Rule 4152. While we are not recommending specific amendments to the rule itself, we agree that additional steps appear to be necessary to improve the rate at which trusted contact information is requested and actually provided. We believe that additional guidance and assistance would help firms more effectively implement the existing requirements and behavioral research may be helpful in developing that guidance. For example, the Ontario Securities Commission published a report detailing research conducted to "understand the psychological, emotional, and social factors that may influence an older investor's decisions and identify behaviourally informed ways of increasing the likelihood they will appoint a TCP [trusted contact person]."[37] The report identified several key biases that can affect investors' willingness to identify trusted contacts, including the tendency for people to underestimate the likelihood of negative events, avoid negative emotions, and overestimate their capabilities relative to others.[38] The report also identified techniques to increase the likelihood that investors would appoint trusted contact persons.[39] Similar research by FINRA could be useful to inform guidance and best practices for FINRA member firms.

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[37] Ontario Sec. Comm. Staff Notice 11-790, *Protecting Aging Investors through Behavioural Insights* (Nov. 9, 2020). *See also* Canadian Securities Administrators Notice of Amendments to National Instrument 31-103: *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP: *Registration Requirements, Exemptions and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients* (July 15, 2021) (describing proposed amendments to require registrants to take reasonable steps to obtain trusted contact information and to clarify that registrants are not prohibited from placing a temporary hold on transactions in certain circumstances).

[38] *See* OSC Staff Notice 11-790, *supra* note 37, Report at 9.

[39] *Id*., Report at 10-11.

V. Customers should be able to choose how they want to receive crucial information and notices, rather than be required to opt out of the firm's favored approach.

In the Notice, FINRA requests comment about the costs and risks for investors and FINRA member firms associated with the electronic delivery of disclosures and other information, the impact of customers becoming more familiar with electronic communications, and what rights customers should have with regard to how they receive information from FINRA member firms. Electronic delivery is likely the way of the future, and it is increasingly becoming the normal practice and the expectation. Nonetheless, as we explain above, technology is not a cure-all. Emails, text messages, instant messages, electronic presentations, videos, podcasts, and other modern methods of communication are commonly used for a variety of purposes. However, such communications do not adequately ensure that the investor will read, hear, or understand the importance of the disclosures. Furthermore, these and similar electronic communications are ill-suited to allowing the client to retain a copy of the disclosure in a form and location that can easily be recalled when necessary.

Many investors, particularly older and sometimes vulnerable investors, have a strong preference to receive statements, confirmations, and other information in paper form. Ultimately, this option needs to be maintained because some investors' increasing comfort with and reliance on technology should not be used as an excuse to force others who may not be as comfortable to follow suit. One need only look at the typical personal email inbox to understand that many people are likely overwhelmed by the amount of information delivered to them on a daily basis. In this environment, it is easy for important information, including opt-out notices, to be ignored or otherwise get lost in the mix of emails, text messages, and push notifications. Thus, it is important that customers be given both a meaningful choice and the simplest possible way to make the choice that best suits their preferences. The best way to do that is to give customers the opportunity to affirmatively opt in to electronic delivery, rather than be defaulted to electronic delivery. Therefore, we would support modernizing certain technical aspects of the E-Delivery Guidance[40] and applying its informed consent and evidence-of-receipt conditions to all electronic delivery, regardless of whether the documents contain the customer's personal financial information.[41]

The Notice also requests comment about the standards that should apply to FINRA member firms' use of negative consent letters to authorize certain actions, such as account transfers. While we agree with FINRA that "customers need to have seamless and efficient access to their accounts," customers also need to have meaningful agency over what happens with their accounts. Accordingly, negative consent should only be permitted in narrow circumstances in which it is

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[40] *See* Notice to Members 98-03, at 2 (Jan. 1998) (providing that "Broker/dealers may be able to evidence satisfaction of delivery obligations, for example, by . . . disseminating information through certain *facsimile* methods" (emphasis added)).

[41] FINRA should not "rescind" the requirement in FINRA Rule 2232(c) that broker-dealers disclose mark-ups and mark-downs on retail customer trade confirmations, as at least one commenter has suggested. *See* SIFMA Letter, *supra* note 27, Attachment at 5. This transparency in the markets is crucial to enable retail customers, who might otherwise lack the knowledge and access to discern this information, to make informed decisions and avoid being victimized by hidden or excessive costs.

impossible or commercially impracticable[42] for the firm to obtain affirmative consent. FINRA should not expand the circumstances in which negative consent is permitted for account transfers under its current guidance,[43] except according to that limiting principle.[44] To the extent that negative consent is permitted, customers must be given sufficient notice of upcoming changes so that they can opt out of any transfer of their account to another firm. FINRA should apply similar principles to those in its E-Delivery Guidance to determine whether the notice provided is sufficient, including whether the customer has consented to the form of delivery of the notice being used by the firm and evidence that the customer actually received it. In sum, FINRA should not permit firms to use negative consent letters in a way that could deprive customers of the right to control their accounts.

VI. Conclusion

NASAA appreciates the opportunity to comment on the Notice. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Leslie M. Van Buskirk

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NASAA President and
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[42] *See*, *e.g.*, *Raytheon Co. v. White*, 305 F.3d 1354, 1367 (Fed. Cir. 2002) ("A contract is commercially impracticable when performance would cause 'extreme and unreasonable difficulty, expense, injury, or loss to one of the parties.'").

[43] *See* Notice to Members 02-57 (Sept. 11, 2002).

[44] It may be appropriate to use the existing requirements for the transfer of investment advisory accounts to inform the consent requirements for FINRA member firms. *See* Notice at 8, Request for Comment D.4.; NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers, § (m) (prohibiting disclosure of "the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client"), (o) (requiring that investment advisory contracts provide, *inter alia*, "that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract") (May 16, 2022). These limitations recognize that there is a relationship between the investment adviser and its clients that extends beyond mere access to an account. To the extent that broker-dealers are providing similar services or otherwise marketing themselves as trusted advisers, rather than merely executing transactions, these requirements might appropriately inform FINRA rules in this area.