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Submitted electronically through https://datacollection.fnrw.finra.org/?notice_ref=366776

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006

Re: **Rule Modernization: Regulatory Notice 25-04**

Dear Ms. Mitchell,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") on its broad review of its regulatory requirements as described in Regulatory Notice 25-04 ("RN 25-04").[2]

We fully support FINRA's efforts to modernize its rules to further its mission of investor protection and market integrity by supporting more efficient and effective regulatory requirements. We agree that changes should be made to help FINRA adapt its oversight to changing business practices and markets; support innovation and the deployment of new technologies and services that benefit markets and investors; and build better tools and resources to help member firms serve investors. In the context of its modernization review, we also refer FINRA to Fidelity's comment letters on prior FINRA proposals, listed in Appendix A.

Executive Summary

As FINRA undertakes a broad review of its rules, we recommend that FINRA focus on the following areas:

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[1] Fidelity is one of the world's leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and other financial products and services. We administer approximately $12.6 trillion in assets from nearly 50 million individual investors, 24,000 employer client firms, 16,000 wealth management firms and institutions, and 8.5 million clearing and custody accounts.

[2] *See* Financial Industry Regulatory Authority; Rule Modernization, RN 25-04 (March 12, 2025), available at https://www.finra.org/sites/default/files/2025-03/Regulatory-Notice-25-04.pdf. In addition to RN 25-04, FINRA also published RN 25-07 regarding the organization and operation of member workplaces. *See* Financial Industry Regulatory Authority; Supporting Modern Member Workplaces, RN 25-07 (April 14, 2025), available at https://www.finra.org/sites/default/files/2025-04/Regulation-Notice-25-07.pdf. Fidelity intends to submit a separate comment letter in response to RN 25-07, addressing numerous issues, including remote inspections, residential supervisory location qualifications, licensing, branch office designations under FINRA Rule 3110, and communications.

1. Default to digital delivery for all regulatory communications.
2. Partner with the Securities and Exchange Commission ("SEC") to review Pay-to-Play Rules.
3. Amend the FINRA Code of Arbitration ("Code") to allow clearing broker-dealers/qualified custodians to file pre-hearing motions to dismiss.
4. Reconsider the impractical 30-day notice requirement for broker-dealers created by FINRA RN 21-27, particularly where the removal of a particular sweep product is beyond the broker-dealer's control.
5. Comprehensively review broker-dealer trade reporting requirements.
6. Expand the definition of "institutional account" to include sophisticated investors, rather than relying on a $50M asset threshold.
7. Revise FINRA guidance so as to require firms to direct customers to BrokerCheck for departing representatives' new contact information.
8. Eliminate the additional representation obligations on "restricted persons" acting as a Finder or in a Fiduciary capacity under FINRA Rule 5130.

1. Digital Delivery Should Be the Default for Regulatory Communications

We strongly urge FINRA to work closely with the SEC and the Municipal Securities Rulemaking Board ("MSRB") to modernize their delivery rules to make digital delivery the default method for delivery of all regulatory communications. Electronic delivery is more efficient and more reliable.[3] In 2025, as the financial services industry begins to welcome digital assets, it is time to transition away from a centuries-old approach (paper) that is both more costly and less effective.

We also encourage FINRA to review its rules to eliminate any "in writing" requirements, which include, but are not limited to, rules regarding confirmations and account statements (FINRA Rules 2230, 2231, and 2232), as well as several corresponding SEC rules and regulations. Revising the text from "in writing" to "furnishing" or "providing" would eliminate any confusion that the SEC's rules and interpretations apply to the delivery of regulatory

[3] *See* Letter from Robert Adams, Chief Operations Officer, National Financial Services LLC, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, SEC Proposal Shortening the Securities Transaction Settlement Cycle (April 11, 2022), available at https://www.sec.gov/comments/s7-05-22/s70522-20123235-279508.pdf; Letter from Fidelity Investments to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Retrospective Rule Review: Lessons from the COVID-19 Pandemic (Feb. 16, 2021), available in Appendix A; Fidelity Investments Letter from Fidelity Investments, Charles Schwab, and BlackRock, to The Honorable Jay Clayton, Chairman U. S. Securities and Exchange Commission (Sept. 8, 2020), available at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/about-fidelity/coalitionletter.pdf; Letter from Cynthia Lo Bessette, Chief Legal Officer, Fidelity Management & Research Company LLC, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, SEC Proposal Tailored Shareholder Reports (Jan. 4, 2021), available at https://www.sec.gov/comments/s7-09-20/s70920-8204333-227469.pdf; Letter from Jonathan Chiel, Executive Vice President and General Counsel, Fidelity Investments to Brent J. Fields, Secretary, U.S. Securities Exchange Commission, SEC Request for Comment on Fund Retail Investor Experience and Disclosure, (Oct. 31, 2018), available at https://www.sec.gov/comments/s7-12-18/s71218-4593694-176325.pdf.

documents instead of being regulated under the E-Sign Act.[4] Currently, this discrepancy creates confusion for investors, as many have attempted to consent either over the phone or through a paper account application for electronic delivery. Finally, the E-Sign Act arguably requires an additional step to confirm e-delivery consent electronically, but FINRA should clarify that this extra step is not required by current SEC electronic delivery guidance.

2. The Pay-to-Play Rules Exceed Statutory Authority and Raise Significant Constitutional Issues

SEC Rule 206(4)-5 and FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) (collectively, the "Pay-to-Play Rules") exceed the SEC's statutory authority. As with the SEC, FINRA's authority to promulgate rules under applicable law is limited to preventing fraudulent, deceptive, or manipulative acts or practices, and identifying means reasonably designed to prevent such acts or practices.[5] Neither the SEC nor FINRA has the authority to create what are in effect strict-liability limits on political contributions. In addition, the SEC and FINRA have two-year look-back provisions that also exceed their authority. The SEC's and FINRA's Pay-to-Play Rules go well beyond what would be reasonably designed to prevent manipulative acts or practices.

The Pay-to-Play Rules also raise significant First Amendment concerns, a problem compounded by the vagueness of the Rules.[6] Notably, in promulgating SEC Rule 206(4)-5, the SEC did not identify a relevant problem in the industry stemming from political contributions. Rather, the cases cited by the SEC involved, for the most part, cash kick-back schemes related to placement agent consultants that were already illegal, separate and apart from any Pay-to-Play Rules. Nor did the SEC justify the two-year look-back period for political contributions made up to two years before a person even becomes a covered associate. The SEC admitted that the rule was "prophylactic," but the United States Supreme Court explicitly rejected that approach in *FEC v. Cruz,* 596 U.S. 289, 306 (2022). Moreover, the Rules' vagueness makes it very difficult, if not impossible, to clearly determine who qualifies as a covered associate (especially when it comes to executive officers) or covered state or local candidates or officials.

We encourage FINRA to work with the SEC to address the Pay-to-Play Rules.

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[4] The Electronic Signatures in Global and National Commerce Act ("E-Sign Act") states that "if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing," then specific requirements, which are different from the SEC's, must be met to deliver it digitally. *See* 15 USC S.7001, available at https://www.law.cornell.edu/uscode/text/15/chapter-96.

[5] *See* 15 U.S.C. § 80b-6(4).

[6] *FEC v. Cruz*, 596 U.S. 289 (2022); *McCutcheon v. FEC*, 572 U.S. 185 (2014).

3. The FINRA Code of Arbitration Procedure Discourages Pre-Hearing Motions to Dismiss, Unfairly Requiring Clearing Broker-Dealers/Custodians to Defend Against Frivolous Claims

There has been a proliferation of frivolous litigation filed in FINRA arbitration against broker-dealers (including clearing firms/qualified custodians) by claimants who seek to hold the firms vicariously liable for the alleged acts or omissions of introducing broker-dealers/registered investment advisor ("RIAs"), simply by virtue of carrying those firms' end customer accounts. A fully disclosed clearing firm/custodian is forced to expend significant time and resources defending itself all the way through discovery and hearings that are based on activities that have been exclusively allocated to the introducing firm (or RIA) by contract, or where the claims are devoid of any facts suggesting participation on the part of the clearing firm/custodian. The costs and distraction of such litigation, as well as the inevitable costs of settling nuisance claims, have a profoundly negative impact on the industry and customers.

More than seven years ago, in March 2018, FINRA sought industry comment on a retrospective review of FINRA Rule 4311 (Carrying Agreements)[7], one of the most important FINRA rules governing the clearing industry. Fidelity proposed, among other things, amending the Code to allow a clearing firm to file a pre-hearing motion to dismiss based on the judicially recognized limited back-office role of the clearing firm.[8] This proposal would align the Code with the allocation of responsibilities required by FINRA Rule 4311 and is supported by judicial precedent.[9] To date, FINRA has not published its findings on the FINRA 4311 rule retrospective.

4. FINRA RN 21-27: SEC Interpretation of SEA Rule 15c3-3 Creates an Impractical 30-day Notice Standard for a Broker-Dealer Where a Sweep Product Needs to Be Removed

Securities Exchange Act ("SEA") Rule 15c3-3(j)(2)(ii)(B)(3)(i)(C) governs "changing, adding or deleting products through a Sweep Program." In FINRA RN 21-27, FINRA announced that the SEC staff had communicated to FINRA that broker-dealers must provide 30-days notice to the customer when changing a sweep product, including where the broker-dealer added or removed any bank or money market mutual fund from a sweep program. It is, however, impractical, if not impossible, to provide 30-days notice for a change in banks or money market mutual funds where removal is required due to events beyond the broker-dealer's control—such as a bank failure or a bank's or money market mutual fund's termination of its participation in a sweep program. We have previously provided proposed language to FINRA to

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[7] FINRA RN 18-10.

[8] In 2009, FINRA amended its arbitration rules to "discourage" pre-hearing motions to dismiss and expressly limited pre-hearing motions to dismiss to one of three scenarios: (1) prior settlements and releases; (2) movant is not associated with the account, security or conduct at issue; or (3) res judicata/collateral estoppel. *See* FINRA Rule 12504.

[9] Submission of National Financial Services LLC to FINRA RN 18-10, dated June 22, 2018, available in Appendix A.

address various situations outside of a broker-dealer's control—and suggested that the notice provision be satisfied by providing notice to the customer on the customer's next available account statement—but to date we are unaware of any action taken in response to the proposal.

Reconsidering this interpretation would be consistent with past practice, such as when the Reserve Primary Funds (the "Funds") "broke the buck" in September 2008. There, member firms asked FINRA whether they may make bulk exchanges of customer assets that were invested in the Funds without complying with the requirements of NASD Rule 2510(d)(2) then in effect, including the 30-day notice period. Given the need to protect investors, and after consultation with the SEC staff, FINRA agreed to permit bulk exchanges of customer assets without compliance with all of the provisions of Rule 2510(d)(2), subject to certain conditions—such as written notification to customers being sent "promptly thereafter."[10] Similar considerations should apply here.

5. Broker-Dealer Trade Reporting Requirements Warrant a Comprehensive Review

Broker-dealer trade reporting requirements play a critical role in helping regulators ensure market transparency, regulatory compliance, and investor protection. However, current reporting requirements are governed by a complex web of systems involving multiple regulatory bodies, such as the SEC, FINRA, MSRB, and the national securities exchanges. Regulators have developed distinct rulesets for these systems independently and incrementally over time. We urge FINRA to lead a comprehensive review of broker-dealer trade reporting requirements to determine areas in which regulatory guidance is needed, identify requirements to be consolidated and/or eliminated, evaluate its ability to share information among market participants, and consider whether fees charged to purchase data meet requisite requirements.

Trade reporting is a complicated area with obligations that are often difficult to implement in practice.[11] Lack of published regulatory guidance has increased the risk of inconsistencies or errors in reporting and allowed regulators to ensnare broker-dealers for mere foot-faults, even where there is no customer harm. In the context of a review of broker-dealer trade reporting requirements, FINRA should solicit requests for trade reporting guidance as part of a broad effort to transform and modernize reporting requirements.

While broker-dealers comply with a myriad of detailed reporting requirements across multiple systems, many of the requirements are duplicative and should be consolidated and/or eliminated. For example, broker-dealers must comply with Electronic Blue Sheet ("EBS") requests, which require detailed post-trade data submissions to the SEC and other regulators,

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[10] FINRA RN 08-48, September 18, 2008.

[11] For example, among others, broker-dealers must report trade data to: FINRA's Trade Reporting Facilities ("TRFs"), Alternative Display Facility ("ADF"), OTC Reporting Facility (ORF), the Consolidated Audit Trail ("CAT"), Large Options Position Reporting ("LOPR") system; MSRB's Real-Time Transaction Reporting System ("RTRS"); FINRA's Trade Reporting and Compliance Engine (TRACE); and make reports pursuant to SEC Rules 605 and 606. In the future, broker-dealers will also be subject to FINRA's Securities Lending and Transparency Engine (SLATE™) Covered Securities Loan transaction reporting requirements.

often within tight deadlines. Meanwhile, firms are simultaneously subject to real-time trade reporting obligations as contributors to the Consolidated Audit Trail ("CAT"), a comprehensive database that collects order and trade life cycle events across the equities and options markets. The coexistence of EBS and CAT highlights the redundant nature of trade reporting regimes, as both systems capture overlapping data through different mechanisms and formats. We urge FINRA to explore the components of these systems that can be consolidated and/or deleted in the context of a trade reporting review.[12]

In addition, while broker-dealers provide tremendous volumes of order and trade data to FINRA to support its surveillance and oversight activity, FINRA does not share, in real-time or near real-time, trade reporting data with broker-dealers that could help to prevent market manipulation and better protect investors. Broker-dealers do not have access to the street-wide view of activity available to FINRA. Without such access, broker-dealers are unable to act quickly to stop potential fraud or manipulative activity occurring across market participants. FINRA should consider how it can implement data sharing or facilitate communication among market participants that would help to combat threats to the market and harm to investors.

Moreover, regulators often needlessly charge broker-dealers twice for regulatory reporting. Broker-dealers are required to report certain transaction data, and they incur regulatory fees in connection with that reporting. Then, after the same data is consolidated, broker-dealers must purchase it back from regulators at a marked-up rate. For example, FINRA has announced fees for broker-dealers (1) to report SLATE data to FINRA and (2) to purchase consolidated SLATE data from FINRA.[13] It is fundamentally unfair to force firms to re-acquire transaction data at inflated prices. While we appreciate the need to recover the costs for building and operating reporting systems, such fees must meet the requirements for fees under the Exchange Act, namely that they are (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory, and (iv) not an undue burden on competition.[14]

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[12] There are also redundancies between TRF, CAT Customer and Account Information System ("CAIS"), and EBS reporting that result from when new regulations are introduced that incorporate aspects of older requirements. Although these requirements may not be the same, it would be helpful to have clarity regarding the intent for each requirement and how it differs across each application. We note that SEC Chairman Paul Atkins recently announced that he has asked SEC staff to undertake a comprehensive review of the CAT, including but not limited to costs, reporting requirements, and the scope of what is collected. We encourage FINRA to work with SEC staff on this effort. See Paul Atkins, Chairman, Securities and Exchange Commission, prepared remarks before SEC Speaks 2025 (May 19, 2025) *available at*: https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925.

[13] FINRA, consistent with the SEC's Rule 10c-1a, proposed a rule change with immediate effectiveness to establish securities loan reporting fees and securities loan data products with associated fees in connection with FINRA's SLATE rule series. *See* Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees in FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATE™)), Release No. 34-101697, File No. SR-FINRA-2024-020 (Nov. 21, 2024), 89 FR 93750 (Nov. 27, 2024).

[14] 15 U.S.C. § 78o-3(b)(5), (6), and (9).

A FINRA-led review of broker-dealer trade reporting requirements is both timely and warranted. This review would seek to enhance regulatory guidance, improve accuracy of reporting, reduce redundancies, and improve the quality of regulatory oversight. This review would also help ensure that broker-dealer costs to produce and submit data to regulators is commensurate with its benefits and align fees for trade and transaction data with requirements under the Exchange Act.

6. FINRA Rule 4512(c)'s Definition of "Institutional Account" Should be Updated and Expanded to Include Sophisticated Investors Rather than Relying on the $50M Asset Threshold

FINRA Rule 4512(c) defines "institutional account" as the account of a bank, savings and loan association, insurance company, registered investment company, registered investment adviser or any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million. A member must treat any account that does not meet this strict definition as a "retail account." FINRA's current definition of "institutional account" is antiquated, too rigid, and does not reflect the evolution of the marketplace over the last 14 years. For example, the current definition prevents certain entity types, such as unregistered hedge funds, money managers, and family offices that do not have at least $50 million in total assets from participating in product and asset offerings available only to "institutional accounts." FINRA's definition of "institutional account" should be expanded to include such entities regardless of their assets under management because these entities are sophisticated investors that do not need the protections afforded to retail accounts. In the alternative, FINRA should broaden the scope of the definition by lowering the asset threshold for "institutional accounts."

7. FINRA Should Require Firms to Direct Customers to BrokerCheck for Departing Representatives' New Contact Information

In FINRA RN 19-10, FINRA stated that a member firm must provide contact information for the departing representative (with his/her consent) to clients when the representative leaves for another firm. There is an easier, more efficient way to provide more information: customers should be directed to BrokerCheck, which exists for this very reason. Information regarding a representative's new firm can easily be found through FINRA's BrokerCheck system. Directing customers to BrokerCheck for a representative's new contact information would have the added benefit of ensuring that the customer is aware of any relevant disclosures related to the departed representative. Therefore, FINRA should direct customers to FINRA's BrokerCheck website if they want to obtain information on a former associate's new firm, rather than requiring the previous employer to insert itself in the referral business.

8. Eliminate Additional Representation Obligations on "Restricted Persons" Acting as a Finder or in a Fiduciary Capacity under FINRA Rule 5130

We support FINRA's efforts to facilitate capital formation and recommend a change to FINRA Rule 5130 to create a more efficient capital formation process.

FINRA Rule 5130 prohibits a broker-dealer from selling an initial public offering of an equity security to an account in which a "restricted person" has a beneficial interest. Under 5130(i)(10), "restricted person" is defined as (A) Broker-Dealers; (B) Broker-Dealer Personnel; (C) Finders and Fiduciaries; (D) Portfolio Managers; and (E) Persons Owning a Broker-Dealer.

The definition of a "restricted person" as "Finders and Fiduciaries" is predicated on whether the person is a Finder or Fiduciary "*with respect to the security being offered*."[15] In practice, this requirement means that the broker-dealer must ask their customer, on each and every new issue offered, as to whether the customer was a Finder or Fiduciary with respect to the security being offered, rather than allow the broker-dealer to obtain a blanket statement from the customer that the customer is not a Finder or Fiduciary. This repetitive process is frustrating to customers and introduces friction into the new issue process.

FINRA should eliminate the "with respect to the security being offered" language in FINRA Rule 5130(i)(10)(C) to create a more efficient capital formation process.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts that FINRA undertakes, or respond to questions FINRA may have about our comments.

Sincerely,

cc: Robert Cook, FINRA President & CEO
Robert Colby, FINRA Chief Legal Officer

The Honorable Paul S. Atkins, Chairman, SEC
The Honorable Mark T. Uyeda, Commissioner, SEC
The Honorable Hester M. Peirce, Commissioner, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC

David Saltiel, Acting Director, Division of Trading and Markets, SEC

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[15] FINRA Rule 5130(i)(1)(C) **Finders and Fiduciaries.** (i) *With respect to the security being offered*, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and (ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

Appendix A
Previous Fidelity Comment Letter Submissions to FINRA

Comment file	Date Submitted
Retrospective Rule Review: Day Trading Regulatory Notice 24-13	01/28/2025
Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)	08/29/2023
Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110: File Number SR-FINRA-2023-006	08/01/2023
Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)	05/25/2023
Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110: File Number SR-FINRA-2023-006	04/27/2023
Notice and Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend Relief to Allow Remote Inspections under FINRA Rule 3110: File Number SR-FINRA-2022-001	02/16/2022
Regulatory Notice 21-35 Order Routing Disclosures for OTC Equity Securities	12/06/2021
Regulatory Notice 21-19: Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting	09/30/2021
Retrospective Rule Review: Lessons From the COVID-19 Pandemic, Regulatory Notice 20-42	02/16/2021
FINRA Regulatory Notice 20-34: Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report	12/04/2020
File Number SR-FINRA-2018-039, Proposed Changes to FINRA Rule 4570 (Custodian of Books and Records)	02/07/2019
Special Notice on Financial Technology Innovation	10/12/2018
FINRA Regulatory Notice 18-10 | FINRA Requests Comment on the Effectiveness and Efficiency of Its Carrying Agreements Rule (FINRA Rule 4311)	06/22/2018
Regulatory Notice 17-38 - Remote Branch Office Inspections	01/12/2018

Appendix A
Previous Fidelity Comment Letter Submissions to FINRA

SR-FINRA-2017-007: Proposed Rule Change to Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements	05/01/2017
Distributed Ledger Technology: Implications of Blockchain for the Securities Industry	03/31/2017
Release No 34-78359; File No SR-FINRA-2016-027 TRACE Expansion	08/15/2016
FINRA Regulatory Notice 15-36, Pricing Disclosure in the Fixed Income Markets	12/11/2015
FINRA Regulatory Notice 14-52, Pricing Disclosure in the Fixed Income Markets	01/22/2015
Retrospective Rule Review on Communications with the Public (Regulatory Notice 14-14)	05/23/2014
Release No. 34-70676; File No. SR-FINRA-2013-042 Alternative Trading Systems	11/12/2013
FINRA Regulatory Notice 10-54: Concept Proposal to Require a Disclosure Statement for Retail Investors at or Before Commencing a Business Relationship	12/27/2010