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Via Electronic Submission

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

Re: Regulatory Notice 25-04 – Rule Modernization

Introduction

Ken Norensberg, CEO of Luxor Financial Group, Inc and former Member of the FINRA Board of Governors, is grateful for the opportunity to comment on **Regulatory Notice 25-04**. As a nationally recognized regulatory and broker dealer compliance consulting firm, Luxor Financial Group regularly consults with broker dealers and their registered representatives and has heard their concerns. As such, we can voice their concerns by presenting this comment letter as follows:

General Comments

As this notice is of a general nature, my comments will touch on several subjects with the intent of bringing attention to items which affect existing Members as well as potential Members who are filing FINRA New Member Applications.

All FINRA Rules need to have a risk-based approach. Over the years Members have heard from FINRA that they are taking a Risk Based Approach to the rules and the enforcement of these Rules. When speaking with Members, the response is always that FINRA is taking a heavy hand through "regulation by enforcement" and that new and existing Rules start out seeking to solve an issue and then transform into other items which become overburdensome to Firms. Firms then feel like they are trying to adjust to Rules which continue to evolve into nonsensical bureaucracy.

An overview of some of the Rules which need to be revised, or at the very least, that Staff take a more Risk Based and Facts and Circumstances view of how these Rules are being applied. To be brief, I will touch on some topics which are thematic to the Members and which I have seen firsthand, the regulatory overreach and the creation of undue burdens on FINRA Member Firms.

Regulation Best Interest ("Reg BI"):

Reg BI starts out with the idea of being transparent with customers and that broker dealers should outline the services that they provide and the costs for the customers. As such, broker dealers are required to produce a Customer Relationship Summary ("Form CRS") to each customer and to have Written Supervisory Procedures in place which outline the various points of Reg BI. As a part of these Rules, every time a recommendation is made to a customer, the registered representative must ascertain that the specific recommendation is in the "Best Interest" of the customer.

- I would suggest that the Rule be modified so that based on the Registered Representatives relationship and knowledge of their customer, they do not have to document each recommendation as they have a detailed knowledge of their client on file and speak with them on an ongoing basis. This concept of having to justify each recommendation has brought a tremendous amount unnecessary documentation on both the registered representatives and the Firms during audits. If an item has been overlooked, for whatever reason, FINRA takes an unnecessary hard stance on the matter.

- Form CRS should not need to be sent to each customer. The Form CRS should just need to be prominently displayed on the Firms website and the Firm should not have to show detailed logs of how and when the Form CRS was sent to customers. The delivery and documentation of the proof of delivery of Form CRS both initially and upon a material change to each customer creates a severe time burden on Firms when customers can simply see it on the Firms website.

Communications with the public:

Over the years, FINRA has sent out numerous notices relating to how broker dealers communicate with the public. The interpretation of these Rules and the way FINRA handles them when auditing Member Firms has created an environment where every word that is put into an offering document or marketing piece is scrutinized to the point of absurdity. This has created an environment where Firms are placing several pages of "disclosures" in a futile effort to appease the regulators and not say anything which may be misconstrued as "exaggerated" "Promissory" "Hyperbole" or any other potential violation based on the subjective reading by an examiner or FINRA enforcement.

The interpretations of the Communications with the public Rules need to be of a Risk Based nature and staff needs to view these communications with a totality of the document and not towards a specific phrase, paragraph or notation.

FINRA New and Continuing Membership Applications:

- Increased regulatory burdens disincentivize entry and innovation in the broker-dealer ecosystem, particularly for emerging firms with differentiated business models.
- Applications from individuals or firms with past disciplinary history should be assessed based on the risk they currently pose, not merely just historical infractions.
- A risk-based, tiered review process should be established that considers the nature, severity, and recency of any prior regulatory or customer issues.
- FINRA must ensure that applicants have a clear, navigable pathway to remediation and eventual approval, rather than indefinite penalization or subjective denials.
- Transparency and consistency in application decisions are critical to maintaining faith in the regulatory system. Applicants should receive detailed explanations and meaningful

opportunities to respond to or appeal adverse findings prior to a denial or withdrawal of their application.

Rather than layering more restrictions and blanket denials, FINRA should rely on a risk-based methodology that evaluates applicants based on objective, proportional criteria.

- Enforcement and approval decisions should reflect due process principles, fairness, and the recognition that reputational damage can have lasting personal and professional consequences.
- Many proposed restrictions will disproportionately affect small firms and individuals seeking a second chance, further consolidating power in the hands of a few large players.
- The regulatory framework should promote inclusion, not exclusion, particularly when no clear or imminent risk to investors is evident.

Concerns of enforcement actions to people's reputations and livelihoods

- Regulatory frameworks must not impose lifetime penalties for past misconduct without consideration for rehabilitation, context, or mitigating factors.
- Public disclosures, sanctions, and enforcement actions can devastate a professional's ability to earn a living, regardless of intent or relative culpability.
- The system must reflect a commitment to proportionality, rehabilitation, and fairness, especially for first-time or low-risk infractions.
- A punitive and inflexible system risks chilling legitimate market participation and fosters distrust in regulatory motives.
- FINRA must prioritize mechanisms that preserve due process and uphold the presumption of competence and integrity unless clear and present risk is demonstrated.
- Form U4 and other public disclosures should only be made based on an actual conviction, not "have you ever been charged with something".
- FINRA needs to make serious considerations when bringing a rules-based enforcement action and make a distinction between a threat to the public and an administrative item which should not be made public.
- All disclosures should have a timeline in which they can be expunged. Having to defend and explain an infraction from more than 10 years ago is not practical and has limited to no bearing on their current circumstances.

FINRA must strike a fair balance between investor protection and the rights of individuals and firms to participate in the market. A **risk-based, measured regulatory framework** is not only more just, but also more effective at ensuring long-term market health. I respectfully urge FINRA to ease the Rules and adopt a more equitable, nuanced approach to rulemaking and enforcement.

Sincerely,

Ken Norensberg

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