



**FINANCIAL  
SERVICES  
INSTITUTE**

VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
FIRMS AND INDEPENDENT  
FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

June 28, 2021

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

Re: FINRA Regulatory Notice 21-17 – Diversity and Inclusion

Dear Ms. Mitchell:

On April 29, 2021, the Financial Industry Regulatory Authority, Inc. (FINRA) published its Notice requesting comment on any aspects of FINRA's rules, operations and administrative processes that may create unintended barriers to greater diversity and inclusion (D&I) in the broker-dealer industry.<sup>1</sup> FSI is committed to advancing D&I in the independent financial services industry. To support our commitment in this area, we are using three primary strategies: 1) lead by example; 2) listen and learn with our members, and 3) identify opportunities for collaboration. FSI commends FINRA on undertaking this review and appreciates the opportunity to comment.

### **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing registered representatives.<sup>2</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).<sup>3</sup> FSI's IBD members provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain,

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<sup>1</sup> FINRA Regulatory Notice 21-17 (April 29, 2021), <https://www.finra.org/rules-guidance/notices/21-17>

<sup>2</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

<sup>3</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.<sup>4</sup>

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

## Discussion

### I. Investors Deserve Access to Competent Financial Advice and Diversity in the Industry Enhances Access for All

FSI's mission is to ensure that all individuals have access to competent and affordable financial advice, products and services delivered by a growing network of independent financial advisors and independent financial services firms. Our members are well-positioned to provide access to a diverse group of Americans because many members operate in smaller cities and more rural areas. As part of our mission, we engage with regulators to provide a healthy regulatory climate that supports investor protection, but also ensures that the regulatory environment does not create undue barriers, which can result in limiting investor access to professional advice.

This past year has highlighted Americans' desire to participate in our capital markets, as evidenced by a recent FINRA Foundation study showing a surge in those who entered the markets for the first time.<sup>5</sup> While the majority of investors identified as part of this study (across all account categories) were White, individuals opening a brokerage account for the first time in 2020 were more racially diverse (17% African American, 15% Hispanic/Latino, 10% Asian) than already existing brokerage account holders.<sup>6</sup> The industry should continue to study disparities in participation in the capital markets across race as an initial measure to better understand access barriers.<sup>7</sup>

While additional data collection and study remains important, available information suggests that people of color remain underrepresented among those working in the financial industry.<sup>8</sup>

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<sup>4</sup> Oxford Economics for the Financial Services Institute, *The Economic Impact of FSI's Members* (2020).

<sup>5</sup> FINRA Investor Education Foundation and NORC at the University of Chicago, *Investing 2020: New Accounts and the People Who Opened* (Feb. 2021), [https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them\\_1\\_0.pdf](https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf).

<sup>6</sup> See *id.*

<sup>7</sup> In a 2015 FINRA Foundation study, results indicated that more than 3 in 10 U.S. households own taxable investment accounts, but African American and Hispanic households were significantly less likely than White households to hold taxable accounts. See FINRA Foundation, *A Snapshot of Investor Households in America*, (Sept. 2015), <https://www.finrafoundation.org/files/snapshot-investor-households-america>.

<sup>8</sup> See e.g., CFP Board, *Racial Diversity in Financial Planning: Where We Are and Where We Must Go*, (2018), <https://www.cfp.net/-/media/files/cfp-board/knowledge/reports-and-research/racial-diversity-in-financial-planning/racial-diversity-in-financial-planning.pdf?la=en&hash=AF448519B74AFB8ED7C74FB4B511E36F> (discussing the need for continued study of financial barriers that exist in Black and Latino communities and the need to increase representation in the financial industry); EEOC, *Diversity in the Finance Industry*, (2006), [https://www.eeoc.gov/sites/default/files/migrated\\_files/eeoc/statistics/reports/finance/finance.pdf](https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/statistics/reports/finance/finance.pdf) (reporting

Certain studies and anecdotal data support that in relationships of trust, people of color and/or non-native English speakers value the opportunity to consult with a professional that shares their race, ethnicity or native language.<sup>9</sup> Similarly, representation in the industry across gender self-identification and sexual orientation is important to analyze. For example, LGBTQ+ individuals who want to discuss important life decisions such as family planning, which can have a major financial impact when IVF or adoption costs are necessary, may seek an advisor who is both experienced and empathetic in having these types of conversations. The FINRA Foundation could consider leveraging the National Financial Capability Study to include questions about diversity and inclusivity among financial advisors in both the investor and state-by-state studies. These types of questions could further illuminate the perspective of a diverse group of participants, including the possibility that some do not invest because they do not see themselves represented in the industry.

Financial advisors can learn about some of the most intimate aspects of a person's life. Most people invest based on personal goals concerning their families, aspirations, and retirements. Ensuring that people from diverse backgrounds can find an advisor that they identify with is critical. FSI remains focused on supporting diversity and inclusion in the industry, recognizing it is mission-critical to ensure that *all* individuals have access to competent and affordable financial advice.

a. FSI's Internal Efforts to Learn and Lead by Example

FSI is committed to being a thought-leader on D&I efforts in the IBD industry. To be positioned to support our members, FSI first focused on various internal initiatives. Our Associate Vice President of People & Culture, working in coordination with our CEO, Dale Brown, ensures that FSI continues to provide an inclusive culture for staff and all FSI stakeholders. This position also oversees all projects related to D&I within the organization, including planning FSI staff education. In September 2019, the team at FSI began its journey to grow our understanding of D&I issues. FSI engaged Trudy Bourgeois of the Center for Workforce Excellence (CWE) and Greg Magennis of Axiom Human Resource Development to guide us over the course of several years. Thus far, we have focused on learning about unconscious bias, privilege, allyship and how to have difficult conversations with one another. In addition, FSI has updated some of our policies and practices, such as blinding resumes to reduce unconscious bias and allowing flexible work arrangements. Also, on October 12, 2020, our CEO, signed the CEO Action Pledge.<sup>10</sup> This Pledge is a commitment, at the executive level, for business to advance D&I in the workplace. To date, more

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aggregate data from five major sectors within the financial services industry based on racial/ethnic and gender self-identification that shows underrepresentation among lower level employees that worsens among managers and partners); GAO, Financial Services Industry: Using Data to Promote Greater Diversity and Inclusion (2021), <https://www.gao.gov/assets/gao-21-448t.pdf> (discussing the importance of collecting employee data to assess diversity and inclusion efforts in the industry, and use of data by banks to increase workforce diversity).

<sup>9</sup> See generally, Tiffany Lam-Balfour, *Why Financial Advisors of Color Matter*, Nerdwallet (Feb 10, 2021), <https://www.nerdwallet.com/article/investing/why-financial-advisors-of-color-matter> (describing the need for community and relatability to build trust among minority communities to grow wealth and shrink the wealth gap); Junko Takeshita, et al., *Association of Racial/Ethnic and Gender Concordance Between Patients and Physicians With Patient Experience Ratings*, JAMA Network Open, Nov. 2020, at 1, 9-10 (showing concordant patient-physician dyads result in improved patient experiences compared to discordant patient-physician dyads).

<sup>10</sup> CEO Action for Diversity & Inclusion, *In a Year of Profound Change, Over 1,100 -Suite Leaders Convene to Accelerate Commitments to Diversity & Inclusion*, (Nov. 2020) <https://www.ceoaction.com/media/press-releases/2020/over-1-100-c-suite-leaders-convene-to-accelerate-commitments-to-diversity-inclusion/>.

than 1,400 CEOs of the world's leading companies and business organizations have signed on to this initiative to act.

On September 8, 2020, our CEO sent a memo to FSI's Board of Directors outlining his vision for how FSI can use its unique position in the industry to educate our members and promote more opportunities for women and people of color to become financial advisors and to rise to leadership positions in independent firms. In November 2020, FSI assembled a Diversity, Equity, and Inclusion (DE&I) Task Force, composed of FSI Board members, firm executives, and financial advisors to execute our three-pronged strategy noted above.

b. Member Support, Education, and Resources

With this strong foundation and a DE&I Task Force comprised of industry executives in place, FSI initiated several member-focused initiatives. From August through October 2020, FSI hosted a three-part member education series (virtually) that included speakers, such as Robert Marchman, Senior Policy Advisor for Diversity & Inclusion at the SEC, and workshops lead by HR experts and industry colleagues, where members could discuss their organizations' initiatives to promote D&I. More specifically, members discussed that focusing on building a diverse workforce is not only "the right thing to do," but also firms should focus on building the "business case" to senior leaders for D&I initiatives. One panelist, for example, explained that a key argument in favor of diversity is that demographics in the United States are shifting, and African Americans and Latinos – traditionally marginalized groups – are gaining in discretionary income and buying power. Individuals and families who have worked hard to start building a strong financial future, should be able to choose an advisor from a diverse group of financial professionals. Across these three workshops, 170 members participated, which evidences our members' commitment to engage and learn about this important area.

FSI continues to gather information from our members through conversation and member survey to understand their D&I plans and implementation successes. FSI plans to host additional programming, including a Women in Leadership session at our upcoming annual conference, OneVoice. We also continue to work with our DE&I Task Force to provide resources, such as a white paper focused on D&I, which includes details outlining our members' D&I initiatives and best practices recommendations from subject matter experts.

**II. Regulatory Barriers Inadvertently Contributing to Challenges & Suggestions to Help Increase Diversity**

FSI commends FINRA for looking at the regulatory landscape through a lens that may help to identify historic practices that could inadvertently: 1) limit access to financial advice for certain groups of prospective investors; and 2) deter certain segments of the population from joining the industry.

a. Investor Diversity and Access: Non-English Materials and Disclosure Documents

Given that one of the key cornerstones of securities regulation and investor protection is full and fair disclosure, encouraging written materials in non-English languages is important to broaden access to the financial markets. According to a Census Bureau survey conducted in 2018,

1 in 7 citizens speaks a language other than English at home.<sup>11</sup> Without access to written materials in a native language, investors are reliant upon others to attempt to orally describe products and services to them, if fortunate, in their native language. Even more challenging, and likely more common, is the circumstance where there is not a financial advisor who speaks the investor's native language. The lack of availability of non-English disclosures by registered broker-dealers, or those registered with them, can also make potential investors more susceptible to fraudulent financial schemes perpetuated outside these regulated channels by those providing information in a native language, making the "opportunity" seem easier, more comfortable, and credible.

We encourage FINRA, both independently and in collaboration with the SEC, to review regulatory barriers that may inhibit the dissemination of materials to retail investors in languages other than English. While FINRA's applicable communication rules do not specify that communications must be in English, they also do not encourage or provide a regulatory roadmap for the use of materials in a foreign language, save a 2001 interpretive letter discussing retirement account presentations.<sup>12</sup> The SEC's FAQ on providing Form CRS in foreign languages, for example,<sup>13</sup> evidences the desire and need for access to materials for retail investors in languages other than English. In addition, FINRA has, on certain subjects, outlined available resources on its website and this area may lend itself to providing additional, easily accessible information to investors and the industry alike concerning the dissemination of materials in foreign languages. Additional information and guidance to ease and encourage firms to provide materials in other languages would be a positive step to increase access to the capital markets. Similarly, other financial regulators have been reviewing ways to provide better access to documents and materials in languages other than English.<sup>14</sup>

In addition, FINRA should ensure that it has diverse, multi-lingual staff, across departments, to support these efforts. Furthermore, FINRA should consider other avenues, besides the availability of additional time, to encourage non-native English speakers to take qualification examinations to join the industry.

## b. Removing Regulatory Barriers to Encourage Diversity in the Industry

### *1. Technology and Remote Work Can Be Tools to Reduce Industry Entry Barriers*

FINRA has demonstrated its commitment to propose changes to support broader representation in the industry. FSI supported FINRA's efforts to modify Continuing Education

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<sup>11</sup> Christopher Ingraham, *Millions of U.S. citizens don't speak English to one another. That's not a problem*, Washington Post (May 21, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/05/21/millions-of-u-s-citizens-dont-speak-english-to-each-other-thats-not-a-problem/> (noting the number of non-English speakers has been rising steadily for more than three decades).

<sup>12</sup> <https://www.finra.org/rules-guidance/guidance/interpretive-letters/name-not-public-70>

<sup>13</sup> Plain English; Fair Disclosure: Relationship Summary in Non-English Language, <https://www.sec.gov/investment/form-crs-faq>

<sup>14</sup> See e.g., Kathleen L. Kraninger, CFPB Board Blog: Bureau takes additional steps to foster an inclusive financial system (Jan. 13, 2021), <https://www.consumerfinance.gov/about-us/blog/bureau-takes-additional-steps-to-foster-an-inclusive-financial-system/>; Jim Clifford, *To reach out to broader audiences, this year we developed numerous ways to provide information in multiple languages on IRS.gov*, IRS (Jan. 21, 2021), <https://www.irs.gov/about-irs/our-commitment-to-serving-a-diverse-nation> (highlighting the IRS's work to provide multiple language options after identifying communicating with diverse communities in the language of their choice is one of the most important ways to make tax information more accessible).

Requirements to allow individuals to keep their registration status even if they temporarily step away from the workforce. This initiative supports parents who may need time away from work to care for young children. Given that the caregiving role still tends to currently rest more frequently with women, this initiative supports women in the industry by reducing barriers to reentering the workforce. Caregiving stress and the availability of affordable childcare cause many women to opt-out of the workforce based on caregiving responsibilities. The Covid crisis has exacerbated many of these issues.<sup>15</sup> While adequate childcare remains a critical issue, remote work options reduce the overall time needed for childcare because it eliminates potentially lengthy commutes. As discussed in more detail in the comment we submitted in response to FINRA Regulatory Notice 20-42, we urge FINRA to reconsider the branch office definition to account for an increase in use of remote offices and alternative work arrangements. Remote work not only supports caregivers as described above, but also is critical to attract younger generations to the industry. Younger workers have grown-up with mobile technology and expect to learn and work in any location, untethered from one central office site.

As we have previously commented, FSI also commends FINRA's online delivery of qualification exams. FINRA's continued commitment to leveraging technology can be a tool to increase accessibility for a variety of groups. Notably, online testing options and technologies associated with them may better support industry entry for disabled individuals.

## *2. Age Diversity Among Independent Financial Advisors*

While remote work and online qualifications exams are important tools to attract younger generations to the industry, we have also sought no-action relief from the SEC to allow the payment of transaction-based compensation to business entities owned and operated by financial advisors. Such no-action relief would remove a technical impediment that can be a challenge in succession planning for those in the independent channel who own and operate their own business. More specifically, independent financial advisors frequently establish a doing business as name (DBA) under which they operate their business. These DBAs may be corporations or partnerships and may employ a single financial advisor or, in some cases, several hundred. The DBA allows financial advisors to provide non-broker-dealer services (e.g., sale of life insurance), undertake proper tax planning, create a viable succession plan, and provide essential employee benefits to their staff.

Through a series of prior no-action letters, the SEC staff has stated on multiple occasions that the receipt of commissions or other transaction-based compensation (TBC) indicates that a person or DBA is engaged in the business of effecting transactions in securities, which triggers an obligation to register as a broker-dealer under Section 15(a) of the Exchange Act. As a result, broker-dealer firms have taken steps to ensure that TBC is paid directly to a registered representative affiliated with the firm. However, this payment structure has created difficulties for independent financial advisors due to the design of contemporary business arrangements. Our no-action request borrows concepts from prior instances in which the SEC granted no action relief to unregistered entities receiving TBC. The payment of TBC would be subject to several conditions designed to ensure that supervision of registered representatives' brokerage activities and over the broker-dealer's brokerage business remains with the broker-dealer. Those conditions are also designed to ensure that the SEC, and any applicable self-regulatory organizations, have access

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<sup>15</sup> See generally, McKinsey & Company, *Women in the Workplace* (Sept. 20, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

to books, records, and other information they may require to exercise their regulatory oversight over the broker-dealer, its registered representatives, and its business operations. This no-action relief, if granted by the SEC, allows for better succession planning, which can attract and retain younger advisors. We will continue to identify and engage with regulators on these types of technical issues that can remove barriers to broader diversity across the industry.

### 3. *Reviewing FINRA Materials and Applications to Support Inclusion*

We encourage FINRA to review its materials and applications to ensure they are inclusive. For example, Form U-4 could be improved to be more inclusive of all genders. Currently, there is a category titled “sex” that provides the options “male” and “female.” That style of categorization is no longer inclusive as gender is more indicative of a person’s lived experiences and how they relate to their clients and operate within the industry. Therefore, FINRA should review this category title and consider changing it to “gender” with options that are more inclusive, for example: “male,” “female,” “transgender,” and “non-binary/non-conforming.” These options encompass more inclusive language for gender identity. Other FINRA materials may benefit from this same type of review to ensure inclusive language is used.

#### c. Data Collection: Measuring Progress and Issue Identification

FINRA should explore opportunities to review the data it collects on investors and industry participants to continue to evaluate progress in the industry related to D&I initiatives. While there is frequently an inherent concern over how demographic data that is collected will be used, such data can be beneficial at an aggregate level to assess the effectiveness of various D&I initiatives. In addition, data and information available to FINRA should be regularly reviewed to ensure that unconscious bias is not embedded in key regulatory functions, such as enforcement proceedings brought against individuals and approval of expungement requests. Reviewing FINRA data on an aggregated level may provide possible evidence of unconscious bias that would warrant additional review and evaluation.

### **Conclusion**

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts. Thank you for considering FSI’s comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robin Traxler". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Senior Vice President, Policy & Deputy General Counsel