



April 24, 2025

To: **Financial Industry Regulatory Authority**
via Online Portal

Ladies and Gentlemen:

This will be the first of a series of comments by the undersigned in conjunction with FINRA's request for comments, as set forth in **FINRA Notice 25-04**.

FINRA's focus, concerning the updating and modernization of its rules, is on:

- *Capital Formation*. Key areas where its rules or related regulatory requirements may affect or create unnecessary challenges for member firms' support of capital formation. These areas include: (1) capital acquisition brokers (CABs) and other "limited purpose" broker-dealer models designed to support capital formation; (2) research analysts and research reports; and (3) other NASD or FINRA rules, guidance and processes impacting capital raising.
- *Modern Workplace*. Key areas where the rules or related regulatory requirements may affect or create unnecessary challenges for how member firms organize and operate their workplace with modern technology and related practices. These areas include requirements regarding: (1) branch offices and remote work; (2) registered representative credentialing and education; (3) means of internal and customer communications (e.g. electronic delivery); and (4) recordkeeping practices, particularly with respect to communications.

For the purposes of this initial comment, we believe FINRA should consider the following regarding capital formation. We will submit comments concerning the "Modern Workplace" in future comment submissions.

A. Concerning Capital Formation: New Category of Firm and MAP

FINRA should consider a new general category of "broker-dealer." Indeed, as firms within this category would operate neither as "brokers" or "dealers" within the fuller meaning of these terms, the term "broker-dealer" would not be used. The category of firm we are referring to would include those firms that do not maintain customer "accounts" within the ordinary meaning of "accounts" (the commercial relationship would be construed as the servicing of "clients" rather than "accounts"). Such category would include Capital Acquisition Broker-Dealers ("CABs"), securities



research-only firms, and other firms where there are no customer accounts, such as firms that serve as placement agents for private funds. This general category may be referred to as "Non-Customer Account Securities Firms" ("NCASFs"). (I use this appellation for discussion purposes only.)

NCASFs would be exempt from any of the rules that relate to or pertain to opening customer accounts, including AML, KYC, ATF, and CDD rules. They would operate pursuant to substantially simplified compliance policies and procedures that address only their specific operations.

As for annual or bi-annual AML examinations, all NCASFs would be exempt from such AML examination obligations. Further, for NCASFs, it is proposed that there should be no minimum net capital requirement or aggregate indebtedness standard, nor should there be any requirement to have annual financial audits by PCAOB or other qualified financial auditing firms.

A minimum net capital requirement would no longer be imposed on NCASFs. Even the minimum \$5,000 net capital requirement makes little sense for a firm that operates in the limited ways described, and such requirement only presents the occasion for a "violation" of net capital rules where such rules do little or nothing to secure the markets or to protect the public interest.

As well, NCASFs should not be required to qualify a General Securities Principal, a Financial and Operations Principal, or other limited purpose principal for supervision purposes. However, FINRA may consider reviving the Series 62 qualification, which covers a wide range of corporate securities, as well as require the SIE for all persons directly associated with the limited purpose activities of the firm. For firms that only prepare "research reports," the current Series 86 and 87 (and exemptions therefrom) requirements would still apply, and the relevant provisions of Rule 2241 would continue to apply.

Working in conjunction with the Securities and Exchange Commission and the National Futures Association, it would be made clear that NCASFs would not be deemed (unless their other activities indicate otherwise) to be "investment advisers" or "commodity trading advisers," as those terms are currently defined in statutes and as used in applicable rules.

Benefits of the NCASF Category: The NCASF category would greatly reduce administrative, compliance, cost, and regulatory risk burdens. In addition, firms with such limited operations would free FINRA and other regulators to focus on firms where there are greater market risks and greater risks concerning investor abuse.



B. Concerning Capital Formation: The MAP Process

Another area that is very much in need of reform, in our view, is the Membership Application Program (“MAP”). The MAP process for new members as well as for “Continuing Membership Applications” has become quite elaborate and complex over the years and, to some degree and at times, onerous. Rules 1014 and 1017 provide the standards for applications, but over the years the requirements for specific types of document submission, and the form of submission, have become excessive and requests by MAP staff have at times been unclear, leading to substantial delays. While we plan to, in a future comment submission, propose a series of suggestions concerning the MAP process, the general comments we will provide presently are as follows:

1. MAP should rely *more* on representations made during the application process and *less* on pro forma documentation that, while based upon honest assumptions in view of known factors, may be substantially revised during the initial year of the applicant’s operation, due to all sorts of experiential factors (decision to redomicile, to pay bonuses, to make purchases of furniture and technology unforeseen during the application process, etc.).
2. Pro forma projections should be used to establish reasonable but general operating scenarios rather than as firm indications of the revenue, expense and net capital experience that will obtain, especially when the owners of the firm have demonstrated that sufficient capital is on-hand should the member firm require it, and that the applicant’s principals are duly qualified and experienced to handle changes in the business plan and operations. In our view, MAP need not micromanage or seek guarantees that the business plan will unfold as initially assumed. Many business plans do not.
3. It should be clarified that, in cases where a change of control is on offer, the change of control may in fact proceed after a substantially complete application is submitted, and that the preclusion of the change of control cannot be a “restriction” imposed by MAP after 30 days have elapsed from the time of the substantially complete submission.
4. In general, representations made by applicants should be relied upon by MAP, rather than stressed during the application process. For example, representations concerning sources of funding, office resources, the experience of proposed registered representatives and principals, and other representations should be accepted unless there is a reasonable basis to believe that the representations are misleading. Should, upon subsequent FINRA examination, a determination be made that a firm materially misled MAP during the application process, FINRA could discipline such firm as deemed appropriate.

As stated, we will have additional comments concerning the MAP process in a future submission.



Benefits of a Streamlined MAP Program: The benefits, in terms of capital formation, are substantial. *As far as FINRA staff time is concerned*, initial and continuing applications would be concluded in substantially less time. As far as applicants are concerned, business operations as well as changes to existing business operations will be able to proceed more quickly, allowing firms to generate revenue without undue time lags.

We appreciate the technology that has been employed to make applications less paper-intensive. This has been a plus for the application process. However, we believe the use of the various application portals has also led to a proliferation of document submissions, records, and representations that has led the application process to become unwieldy and, for the applicant, fraught with uncertainties as to whether the submissions, however comprehensive, are sufficient to satisfy MAP staff.

Respectfully submitted,

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