



May 4, 2022

*Via Email: [pubcom@finra.org](mailto:pubcom@finra.org)*

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

Re: FINRA Regulatory Notice 22-08 Request for Comment

Dear Ms. Mitchell,

I am providing these comments in response to FINRA Regulatory Notice 22-08 on behalf of InspereX LLC (“InspereX” or “the Firm”), a registered broker-dealer headquartered in Chicago, Illinois (CRD#: 101420). InspereX is responding only to those questions referenced below that are directly applicable to the Firm’s business model.

InspereX appreciates the opportunity to provide comments to this Regulatory Notice and share practices the Firm has implemented in relation to the offering of complex products.

### **Executive Summary**

InspereX is a wholesale broker-dealer that primarily assists well-known seasoned issuers in the offer, sale and distribution of their registered retail market-linked securities offerings. These securities are typically offered on an ongoing, programmatic basis, and InspereX distributes such securities offerings through a broad distribution network of selling group members. InspereX defines a “structured or market-linked product” as a debt obligation wherein a portion (or all) of the interest and/or principal payments are calculated based on the performance of an underlying reference or derivative asset (“structured product”). The Firm primarily wholesales these structured products to various bank-affiliated and regional broker-dealers and their registered financial professionals. InspereX’s wholesalers provide product education and training to these registered representatives to support their sales of such structured products to their firm's retail customers. In this comment letter, InspereX focuses principally on the application of proposed complex product rule enhancements in relation to new issue retail structured product offerings.

FINRA Regulatory Notice 22-08 offers no current standardized definition of a “complex product.” While InspereX believes that providing examples of features that make a product “complex” are helpful, the term “complex” is overly ambiguous and taken in the wrong context, could prove harmful to individual investors, particularly those investors seeking structured products that serve as a hedge against particular adverse market conditions.

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Simply because a product feature may be “complex” does not mean that the product raises investor protection concerns. For instance, structured products offered through InspereX are risk management tools that offer investors flexibility to protect against a wide array of market conditions given their individual investment profile and investment objectives. When buying structured products or other products currently classified as “complex,” many investors typically seek out the knowledge and expertise of financial professionals to help navigate the various investment options that may be appropriate for their individual investment profile. FINRA has stressed that members must educate representatives on these products, features, and risks, prior to offering to retail investors. In addition, Regulation Best Interest (“Reg BI”) imposes an affirmative duty on these representatives to make recommendations that are in the best interest of retail investors. Therefore, member firms already have stringent sales practice obligations when selling such instruments, especially to retail customers.

InspereX believes Reg BI’s affirmative duty to evaluate complex products to ensure that recommending the product is in the best interest of the retail investor necessitates no additional need to conduct further rulemaking on complex products. Likewise, if firms are required to add restrictions surrounding categories of securities available to investors in self-directed accounts, FINRA could inadvertently force firms to make a recommendation which thereby imposes a duty of best interest with respect to self-directed brokerage accounts. Due to the implementation of Reg BI, current and past FINRA guidance, and the current abundance of available information available to investors, InspereX believes that there should be no further rulemaking related to the sale of complex products. Instead, regulatory focus should be centered on specific classes of complex products, ie. leveraged ETFs, that could cause the greatest potential investor harm.

***FINRA Request:***

1) How do members categorize products as “complex”? Have firms implemented categories or tiers of complex products and, if so, how have firms determined such tiers? What types of products have recently been introduced that should be viewed as complex? Does our description of characteristics that render a product “complex” continue to appropriately cover necessary products?

***InspereX Response:***

*InspereX does not categorize products as “complex,” but looks at all features and strategies of each product offered through the Firm to determine whether or not heightened supervision is warranted. Although FINRA Regulatory Notices 12-03 and 22-08 provide examples of retail-oriented products that may be considered “complex,” FINRA has not provided members a standardized definition of a “complex product.” While InspereX believes that these examples are helpful, the term “complex” is overly ambiguous and could prove harmful to individual investors. Simply because a product is deemed “complex” does not mean that the product raises investor protection concerns. In fact, many of the products outlined in the specified Regulatory Notices have risk management features that could prove beneficial to individual investors in a variety of market conditions. For example, market-linked products provide exposure to the performance of a market index or reference asset (or strategy) but with pre-defined downside*

*protection, subject to issuer credit risk. Unlike a mutual fund or ETF tracking the same reference asset (or strategy), these products can be uniquely designed to align to an individual investor's risk tolerance. FINRA's current guidance has not deemed traditional equity investments or plain vanilla bonds to be "complex," however, these "non-complex" products do not provide any of the risk management features or benefits discussed herein. When the SEC and FINRA attach a negative stigma to "complex products" it can severely limit the available product suite to adequately meet an investor's stated financial goals and objectives. Thus, InspereX believes that an update to the description and definition of "complex product" is necessary with focus on products that contain both undue risk and complexity.*

***FINRA Request:***

3) What specific supervisory practices that enhance members' review of a customer's transactions in complex products, including transactions in self-directed accounts, have proved effective?

***InspereX Response:***

*FINRA member firms currently have both a reasonable basis suitability and customer-specific best interest requirement when offering products to retail investors. As a distribution participant that does not make investment recommendations to retail customers, InspereX has implemented a vetting process to determine if a structured product offering is "new" to the Firm and/or the marketplace or if there has been a material modification to a product traditionally offered through the Firm. If so, InspereX performs a reasonable basis suitability evaluation by considering the complexity of the new product, whether the complexity would impair investor understanding of the new product and how complexity would affect the marketing and sale of the product prior to offering. This process is performed through a new products committee review with all relevant areas of the Firm represented (Compliance, Risk, Finance, Sales, etc.) Further, the Firm performs an annual look-back to determine how products vetted in the previous calendar year have performed and to ensure that they remain suitable applying a reasonable basis suitability evaluation.*

***FINRA Request:***

4) What are effective practices by members for reviewing advertising with respect to complex products?

***InspereX Response:***

*InspereX has created a library of issuer-agnostic, FINRA-reviewed structured product educational materials for individual retail investors. These educational materials include brochures, videos, presentations, and client seminars. The content of such materials ranges from investment types (marker-linked certificates of deposit, principal protected notes, etc.) to various features of specified products. When creating these materials, InspereX primarily aims to adhere to FINRA Rule 2210(d) content standards. As part of doing so, the firm believes in highlighting material risks of each product in the body of the educational materials and not in corresponding*

*footnotes or disclaimer. By calling out the risk features in the body of the educational materials, InspereX hopes that an investor can make an independent and informed determination of whether the investment product would help meet their individualized investment goals based upon the risk and reward potential of the product.*

*Further, InspereX has incorporated a two-tier advertising review whereby the Compliance Department reviews all advertisements prior to principal (Series 24) approval. The Firm follows this process, regardless of product type, to ensure that each advertisement discloses material risks and that the messaging is consistent across the firm and advertising mediums.*

***FINRA Request:***

5) How do members assess financial professionals' understanding of specific products?

***InspereX Response:***

*FINRA's past guidance, including NTM 05-69, stresses the importance of firms' training their registered personnel on the characteristics, risks, and rewards of structured products. In following this guidance, InspereX has implemented a wholesale model based on education that makes tools and training available for downstream firms to assess their registered personnel's understanding of these products through both formal and informal means. Formally, InspereX offers structured product training modules and private-labeled training modules for downstream financial professional use and education. Many member firms require their registered representatives to complete these training modules and pass an associated assessment prior to selling structured products at their individual firm. Informally, InspereX provides webinars, individual meetings, and other events available exclusively for representatives and supervisors at member firms. These tools allow downstream member firms to assess whether they are fulfilling their sales practice obligations when selling these instruments, particularly to retail customers.*

*Further, FINRA Rule 1240(b)(2) currently requires members to implement a training plan which, at a minimum, covers securities products, services, and strategies offered by the member including general investment features and associated risk factors.*

***FINRA Request:***

8) Should targeted communications, such as push notifications to self-directed retail customers regarding complex products, be subject to specific restrictions? For example, should they be restricted unless certain conditions have been satisfied, including that the account has been approved for complex products?

***InspereX Response:***

*InspereX believes that each retail communication relating to a securities product should stand on its own from a content standard perspective and appropriate for all types of retail audiences and therefore should not be subject to additional restrictions. Retail communications are subject to FINRA content standards and filing requirements to ensure that investors can adequately understand the communication. As proposed, push notifications with additional restrictions*

would create a sub-categorization of a retail investor as defined by FINRA's marketing rule (FINRA 2210). Further, creation of a sub-category of this standard would likely create more confusion between a member's obligation to adhere to both Regulation Best Interest and FINRA advertising standards.

**FINRA Request:**

9) In addition to applicable requirements in FINRA Rule 2210 (Communications with the Public), should members be required to file communications that promote or recommend complex products with the Advertising Regulation Department of FINRA for review before their first use?

**InspereX Response:**

*In order to require members to file "complex product" communications before first use, FINRA first needs to define specific products deemed "complex." If these products are defined by rule, InspereX believes that members should be required to file such communications with the Advertising Regulation Department of FINRA ("the Department") before first use. Further, InspereX believes that these communications should be withheld from publication or circulation until any changes specified by the Department have been implemented, as currently required by certain members in FINRA Rule 2210(c)(2). This practice for complex product communications limits the possibility of a retail investor relying on misleading or unbalanced communications to make an investment decision. InspereX currently follows this outlined procedure for all firm-created retail communications, not solely for structured products, filed with the Department. The Firm has found this process and working with the Department to be a valuable educational opportunity that ensures firm communications not only adhere to all aspects of Rule 2210, but adequately provide investors with the necessary tools to determine if an investment is the right fit for their individual risk profile.*

**FINRA Request:**

11) Are there regulatory developments in other jurisdictions related to complex products that would strengthen protections regarding complex products, including in self-directed accounts? For example, to address the risk of customer overestimating their knowledge and experience, should members be required to implement:

- a. Procedures designed to limit a customer's possible circumvention of questionnaires such as a cooling-off period before a customer can respond more than once to a questionnaire designed to assess their level of knowledge?
- b. Tools to counterbalance self-assessments with objective criteria?
- c. In the case of online services, design features to ensure information and questionnaires are sufficiently clear?

**InspereX Response:**

*Each member firm has its own client base, financial professional sales expertise and access to resources. Further, several member firms strictly deal in a single product type. Thus, InspereX believes that each member firm should make their own determination of how to supervise each*

*business line they offer, not just complex products. By limiting a certain product or class of products for self-directed accounts, the firm may implicitly engage in making a securities recommendation or therefore would need to be acting in the best interest of that retail investor. By doing so, these firms potentially expose themselves to the requirements of Reg BI. Limiting these products and product lines could rob conservative investors of the risk management or hedging features that certain products are intended to address. Accordingly, InspereX believes that no further rulemaking is necessary at this time and FINRA should allow members to decide appropriate parameters and supervisory structures for self-directed accounts.*

***FINRA Request:***

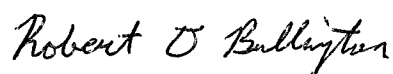
12) Given the uptick in transactions in options and other complex products through self-directed platforms, many of which are designed to provide retail customers with easy access to an array of financial products, are additional guardrails needed for these types of platforms, including for example, in cases where communications through the platform do not rise to the level of a “recommendation” under Reg BI?

***InspereX Response:***

*Investors should not be limited to certain product offerings in a self-directed platform so long these platforms provide tools to help investors assess the risks and potential rewards of each product offered through the platform. It is the responsibility of a member and its representatives to know its customer base and to establish a tailored supervisory structure to implement guardrails appropriate for such customer base.*

Thank you for considering InspereX’s comments.

Sincerely,



Robert D. Bullington  
InspereX LLC  
Vice President, Compliance Officer