



May 9, 2022

VIA ELECTRONIC DELIVERY

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

RE: Regulatory Notice 22-08: FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements (May 9, 2022)

Dear Ms. Mitchell:

Virtu Financial, Inc. (“Virtu”)¹ appreciates the opportunity to comment on the above-referenced Regulatory Notice (the “Notice”). Our firm has long been a vocal proponent of smart, data-driven regulation that supports the goals of enhancing transparency, fostering robust competition among market participants, and ensuring the high quality of the retail investor experience – goals that we are certain FINRA shares. Virtu supports and recognizes the important role that FINRA plays as a self-regulatory organization in protecting investors. However, we believe that many of the potential regulatory requirements contemplated by the Notice greatly exceed FINRA’s regulatory authority by unfairly and inappropriately limiting access to products and restricting investor choice.

For example, the Notice solicits comment on whether broker-dealers should be required to pre-approve their customers to buy and sell certain complex products, including on self-directed platforms, and contemplates a continuing monitoring obligation that could require further approvals – or disapprovals – in connection with investors’ subsequent transactions. The Notice even tees up the possibility that investors would need to pass a “knowledge test” before they are allowed to transact in products that FINRA deems to be a “Complex Product”. The Notice also contemplates extremely burdensome recordkeeping, supervisory, and monitoring obligations for broker-dealers, including a requirement to file all communications concerning complex products with FINRA. These are just a few of the costly and stringent new regulatory obligations that FINRA appears to be contemplating in connection with possible future rulemaking – obligations

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants and investors.



that, in our view, ultimately would result in broker-dealers offering fewer products to investors, thereby constraining investors' ability to make their own decisions about which products they want to buy or sell.

Virtu strongly opposes the imposition of regulatory hurdles that would stand in the way of investors exercising their right to make their own investment decisions. It's not hard to see a world where, out of an abundance of caution, investment advisors do not recommend and/or retail brokers do not allow the trading or investing in complex products. Effectively, by categorizing products as "complex" and limiting investors' access to certain products, FINRA is picking winners and losers among product types and their respective issuers. This would exceed FINRA's mandate and scope of authority under the securities laws.

Our system is one rooted in disclosure and not merit. Virtu believes that that the availability of fulsome risk disclosure and opportunities for investor education are important components of our markets that allow investors to make informed choices if they wish to avail themselves of the information. Notwithstanding the integrated disclosure regime that exists for issuers of securities, unfortunately many investors may not read the materials that are made available to them. Nonetheless, we allow investors to make self-directed decisions to purchase securities of SEC registrants. We believe that rules that remove or alter investor choice have no place in our markets.

In 2020, Virtu submitted a comment letter² to the Securities and Exchange Commission ("SEC") in connection with a proposed "sales practice" rule³ that would have heightened the obligations of broker-dealers in connection with customer transactions involving leveraged or inverse funds. In that letter, we articulated a number of reasons why it was inappropriate for the SEC to impose additional restrictions on access to such funds. Specifically, we explained that adopting the rule would:

- Represent an unprecedented example of merit-based regulation and a worrisome departure from the disclosure-based foundational principles of the federal securities laws;
- Constitute an unnecessary solution to a non-existent problem and could send the Commission down a slippery slope toward merit-based regulation of other products;
- Would limit investor choice and are inconsistent with the Commission's recent efforts to expand retail access to the public and private capital markets;
- Ignore the robust regulatory framework that is already in place to protect investors in leveraged and inverse funds;

² Virtu Letter to Vanessa Countryman (Apr. 24, 2020), available at <https://www.sec.gov/comments/s7-24-15/s72415-215949.pdf>.

³ U.S. Securities and Exchange Commission, Proposed Rule, *Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles*, Release No. 34-87607; IA-5413; IC-33704; File No. S7-24-15 (Nov. 25, 2019), available at <https://www.sec.gov/rules/proposed/2019/34-87607.pdf>.



- Would impose needless costs that ultimately would be borne by investors; and
- Exceed the Commission's statutory authority.

As a consequence of these and other similar critiques advanced by Virtu and more than 5,000 other commenters, the SEC ultimately abandoned the flawed sales practice component of the proposed rule. The same policy arguments articulated in our SEC letter apply to all of the potential additional regulatory requirements contemplated by the Notice. We urge FINRA to review and consider the points we made in that letter (*the link to which is provided in footnote "2" herein*).

As we have repeatedly stated, Virtu firmly believes that the U.S. equity markets are the most robust, transparent, and fair markets in the world, and that one of the most important attributes of those markets is the freedom of investors to make their own investment decisions. We strongly encourage FINRA to refrain from imposing unnecessary and unprecedented barriers to investor access to our capital markets.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Thomas M. Merritt", with a stylized flourish at the end.

Thomas M. Merritt
Deputy General Counsel