



10401 North Meridian Street  
Suite 202  
Indianapolis, IN 46290

317.663.4180 *main*  
317.815.0871 *fax*  
866.353.8422 *toll free*

[www.adisa.org](http://www.adisa.org)

January 8, 2019

VIA Email to: [carlo.diflorio@finra.org](mailto:carlo.diflorio@finra.org)

Mr. Carlo di Florio  
Executive Vice President  
Member Supervision/Shared Services  
Financial Industry Regulatory Authority, Inc.  
1735 K Street  
Washington, DC 20006-1500

Re: Examination Findings

Dear Mr. di Florio:

The Alternative and Direct Investment Securities Association (ADISA),<sup>1</sup> is pleased to respond to the invitation to provide feedback on the 2018 Examination Findings report issued by the Financial Industry Regulatory Authority (“FINRA”), last month. We commend your efforts to communicate effectively with FINRA membership on recent trends and findings, and we wish to highlight several areas and suggest some areas of potential enhancement for future examinations.

A. ADISA

At the outset, we want to laud FINRA for its willingness to share information it has gathered on various issues that member firms face, particularly as they attempt to make alternative investments available to their clients. As an organization focused on helping its broad-based membership bring quality alternative investment opportunities to investors of all types and means, ADISA understands and appreciates the value of providing information to member firms that is both useful and actionable. ADISA focuses on collecting and/or generating information and resources for its members that are timely and relevant, including information, etc., regarding alternative investments. ADISA members bring high quality alternative investment opportunities to the marketplace, and the organization is committed to helping these firms develop and implement high standards for product design, operation and distribution.

---

<sup>1</sup>ADISA (Alternative & Direct Investment Securities Association), is the nation’s largest trade association for the non-traded alternative investment space. Through its 4,500 financial industry members, ADISA reaches over 220,000 finance professionals, with sponsor members having raised in excess of \$200 billion in equity in serving more than 1 million investors. ADISA is a non-profit organization (501c6), registered to lobby, and also has a related 501c3 charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

The Association carries out its mission in various ways, including by means of industry-direct educational programs offered at ADISA-sponsored conferences and webinars, as well as through the creation and dissemination of issue- and product-specific videos and pamphlets. ADISA routinely submits comments letters and related submissions in response to industry-related initiatives undertaken by regulators at the federal and state levels and engages in frequent dialogue with legislators and regulators in order to supply them with useful information about alternative investments and their use in client portfolios. In all these ways, ADISA seeks to ensure that alternative investment products and services brought to market represent high quality and well-managed opportunities designed to help investors and savers alike meet their financial goals.

**B. FINRA Report – Suggested Enhancements**

FINRA intends its year-end report to serve “as another resource for [member] firms to strengthen their compliance programs and supervisory controls.” We agree that this is a worthy purpose. It is noted in the report’s introduction, moreover, that many firms proactively fix deficiencies identified, rather than waiting for a deficiency letter or other communication. We applaud such actions.

That said, while the report will provide FINRA members with a sense of what the organization is seeing in the course of its examination program, the report could be further enhanced by clearly prioritizing or characterizing its observations as well as identifying the standards FINRA used in determining whether to include an observation in the report. We note that FINRA uses such elements as potential significance, frequency of occurrence and potential impact on investors and the markets as baseline criteria, but we do not know whether the observations included in the report were those that were found to be most persistent or pervasive (or of ranked importance to investors). We believe that making clear the standards used in deciding whether to include an observation and the relative materiality of such findings in the report would be of use to member firms and others in assessing the report’s findings and conclusions.

Within the topics covered, moreover, we believe that it would prove useful for FINRA to include information about potential solutions or steps that members used or may use to address shortcomings and other problems observed. As ADISA has come to understand with regard to its own efforts to improve industry standards, this approach would be helpful to member firms and FINRA members might also welcome a qualitative assessment of the problems and issues observed – for example, were the problems observed more or less severe (or more or less widespread), than those identified in the past examinations?

We also believe that providing greater clarity around FINRA’s standards used for including an observation in the report would lead to fewer instances of the report’s conclusions being “sensationalized” in the press and elsewhere. Adding context for understanding the extent to which the observations cited were prevalent and/or truly critical to investor interests will help to ensure that persons summarizing the report draw appropriate conclusions on the report’s application to the industry. Headlines that accompanied the report’s issuance clearly show the effect that the lack of articulable inclusion criteria had on the ability of readers to comprehend and accurately characterize the

report and its contents.<sup>2</sup>

Finally, we suggest that the report explore the linkage – if any - between FINRA’s beginning of year examination priorities and observations made in the course of a calendar of examinations. Understanding the organization’s expectations going in and its observations gleaned from a year of practical experience should be useful to FINRA member firms and the industry alike. And tying together the lists of priorities, on the one hand, and findings, on the other, should make it less possible for casual observers and commentators to distort the findings or otherwise present the contents of the report in a misleading way.

---

ADISA appreciates very much the work of FINRA in its careful and thoughtful consideration of its report. Much progress has been made, and we ask that you give our further comments consideration. We stand ready to assist further in any way we can and to discuss our comments in person or by phone at your convenience.

Sincerely,



John P. Harrison  
Executive Director

ADISA Drafting Committee: Catherine Bowman, John Grady, Larry Sullivan

cc: Greg Mausz, ADISA president

---

<sup>2</sup>Iacurci, G. (2018, December 7) “Finra exams find fault with sales of variable annuities, nontraded REITs and private placements.” Investment News. Retrieved from [https://www.investmentnews.com/article/20181207/FREE/181209937/finra-exams-find-fault-with-sales-of-variable-annuities-nontraded?NLID=daily&NL\\_issueDate=20181207&utm\\_source=Daily-20181207&utm\\_medium=email&utm\\_campaign=investmentnews&utm\\_visit=543448&itx\[email\]=f953e03038b7e a5a5a89f8d89c70ed22b6a9e1afbb4c509739bb9e4478a78433%40investmentnews](https://www.investmentnews.com/article/20181207/FREE/181209937/finra-exams-find-fault-with-sales-of-variable-annuities-nontraded?NLID=daily&NL_issueDate=20181207&utm_source=Daily-20181207&utm_medium=email&utm_campaign=investmentnews&utm_visit=543448&itx[email]=f953e03038b7e a5a5a89f8d89c70ed22b6a9e1afbb4c509739bb9e4478a78433%40investmentnews)