

Regulatory Notice

22-08

Complex Products and Options

FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements

Comment Period: May 9, 2022

Summary

The availability of complex products and options can potentially expand the investment opportunities for retail investors and, if properly understood, offer favorable investment outcomes (e.g., enhancing returns, limiting losses or improving diversification). However, important regulatory concerns arise when investors trade complex products without understanding their unique characteristics and risks. Like complex products, trading in options may pose risks if investors do not have the financial experience to understand options and options trading strategies. Therefore, we have taken steps to address complex products and options over the years, including publishing guidance regarding sales practice concerns raised by complex products and options; issuing investor-focused alerts to highlight the risks of these products; adopting rules with specific requirements for particular complex products and for options; and examining members for compliance with SEC and FINRA rules.

The number of accounts trading in complex products and options has increased significantly in recent years. As a result, we are again reminding members of their current regulatory obligations, including, as discussed below, the application of Regulation Best Interest (Reg BI) when broker-dealers and their associated persons make securities recommendations, and recommendations of investment strategies involving securities, to retail customers. In addition, we are soliciting comment on: (1) effective practices that members have developed for complex products and options, particularly when retail investors are involved; and (2) whether the current regulatory framework, which was adopted at a time when the majority of individuals accessed financial products through financial professionals, rather than through self-directed platforms, is appropriately tailored to address current concerns raised by complex products and options.¹

March 8, 2022

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Options
- ▶ Registered Representatives
- ▶ Retail
- ▶ Senior Management
- ▶ Trading

Key Topics

- ▶ Complex Products
- ▶ Compliance Programs
- ▶ Options
- ▶ Supervision

Referenced Rules & Notices

- ▶ FINRA Rules 2111, 2210, 2211, 2215, 2220, 2310, 2320, 2330, 2350, 2360 and 2370
- ▶ Information Notice 2/3/21
- ▶ Notice to Members 80-23
- ▶ Notice to Members 05-59
- ▶ Regulation Best Interest
- ▶ Regulatory Notices 09-31, 09-73, 10-09, 10-51, 12-03, 17-32, 20-14, 21-15

Questions regarding this *Notice* should be directed to:

- ▶ [Meredith Cordisco](#), Associate General Counsel, Office of General Counsel, at (202) 728-8018;
- ▶ [Danny Mileto](#), Vice President, FINRA Market Regulation, at (212) 457-5323; or
- ▶ [Kathryn Moore](#), Senior Director & Counsel, FINRA Market Regulation, at (202) 728-8200.

Action Requested

FINRA encourages all interested parties to comment on this request for comment. Comments must be received by May 9, 2022.

Comments must be submitted through one of the following methods:

- ▶ Online using FINRA's comment form for this *Notice*;
- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: Comments received in response to *Regulatory Notices* will be made available to the public on the FINRA website. In general, comments will be posted as they are received.²

Before becoming effective, a proposed rule change must be approved by the FINRA Board of Governors and filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).³

Background & Discussion

What Is a Complex Product?

There is currently no standard definition of a “complex product.” Because new products and strategies are constantly introduced, FINRA has construed the term “complex product” flexibly to avoid a static definition that may not address the evolution of financial products and technology. In [Regulatory Notice 12-03](#), FINRA described characteristics that would render a product “complex.”⁴

Specifically, FINRA has described a complex product as a product with features that may make it difficult for a retail investor to understand the essential characteristics of the product and its risks (including the payout structure and how the product may perform in different market and economic conditions). A product that combines features of multiple products and strategies also may be complex (e.g., leveraged or inverse exchange-traded products (ETPs)—collectively, “geared” ETPs—that can employ futures contracts and other derivatives or may engage in short sales; structured products with embedded optionality; interval funds; non-traded REITs).

Although FINRA refrained from defining “complex product” in *Regulatory Notice 12-03*, we provided numerous examples of the types of retail-oriented products that would be considered complex at that time, such as a variety of structured retail products (e.g., steepener notes and notes with worst-of features) and ETPs (e.g., geared and volatility-linked ETPs).⁵ We continue to believe that the features of these products are such that they may be difficult for a retail investor to understand the essential characteristics of the products and their risks and, are, therefore complex. In addition, since the publication of our guidance in *Regulatory Notice 12-03*, other types of products exist, or have recently emerged, that may be considered complex, including the following examples:

- ▶ Defined outcome exchange-traded funds (ETFs) that offer structured retail product-type features, such as exposure to the performance of a market index or reference asset but with downside protection and an upside cap on potential gains over a specified period (typically one year). Unlike structured notes offering similar exposure but without an underlying portfolio, these defined outcome ETFs typically invest in exchange-listed options to provide the exposure. Similar to geared ETPs with a periodic exposure reset, defined outcome ETFs provide the specified outcome if an investor buys the ETF at the beginning of the period and holds it until the end. Otherwise, an investor’s returns could deviate significantly from the specified outcome.

- ▶ Mutual funds and ETFs that offer strategies employing cryptocurrency futures.⁶ In addition to their exposure to cryptocurrency, which could itself be considered complex, these funds track futures contracts rather than the underlying cryptocurrency. Like other futures tracking products, such as commodity futures-linked ETPs, their performance may deviate considerably from that of the underlying asset. An additional potential layer of complexity may also relate to how these funds are structured and access the futures market (e.g., using a wholly-owned offshore subsidiary).⁷
- ▶ Interval funds, or tender-offer funds that provide limited liquidity to investors. Unlike traditional mutual funds, which in most situations allow investors to redeem 100 percent of their holdings in a specific fund at the next determined daily net asset value, these registered investment companies present complexities in the redemption process and in the amount of holdings available for redemption during a given period. Typically, investors can only exit an interval fund at certain intervals and the fund is only required to redeem five to 25 percent of its shares on a quarterly or sometimes less frequent basis, through a process where the fund “repurchases” shares from investors.⁸ Tender-offer fund repurchase offers are further subject to the discretion of the issuer’s board. As a result, investors may not be able to redeem all of their holdings during a repurchase window if the total amount of shares tendered by shareholders for repurchase exceeds the threshold set by the fund’s board for that repurchase window. In addition, shareholders must comply with the repurchase request deadline several weeks prior in order to redeem shares in the given period. Further, at the time an investor must commit to the repurchase process for an upcoming window, the investor will not know the price at which shares will be redeemed.⁹

These are examples only and are in no way meant to be exhaustive.

Concerns Raised by Complex Products and Options

While many complex products serve a role in our financial markets, they also may raise a number of regulatory and investor protection concerns. For example, if a product has features or payout structures that would be confusing to retail investors, or if it performs in unexpected ways in various market or economic conditions, investors may not fully understand the attendant risks. Moreover, depending on how a complex product is structured, some may have built-in statutory protections while others may not, and this may not be clear to the investor.¹⁰ Although complex products do not always translate into more investment risk, their complexity may confuse investors who may not adequately understand their features. These concerns may be heightened when a retail customer is accessing these products through a self-directed platform and without the assistance of a financial professional, who may be in a position to explain the key features and risks of the product to the retail investor.

In addition, as SEC Chair Gensler has recently suggested, complex products can potentially create system-wide risks by operating in unanticipated ways when markets experience volatility or stress conditions.¹¹ Trading in complex products may also affect underlying assets. Thus, well-conceived protections in the sale and trading of complex products benefits market integrity in underlying markets.

Because of these concerns, complex products require careful member scrutiny and supervision. If financial professionals do not fully grasp the complex product's features, they may engage in recommendations and sales that are not in the best interest of the customer. For example, in 2021, FINRA sanctioned:

- ▶ a member that failed to reasonably supervise its brokers' recommendations of leveraged, inverse and volatility-linked ETPs, leading to unsuitable recommendations of these products that caused customer losses;¹²
- ▶ a member that failed to reasonably supervise a broker who recommended that numerous customers liquidate their retirement accounts and invest the proceeds in structured notes and other speculative and illiquid securities;¹³
- ▶ a member that failed to reasonably supervise a broker who recommended that his customers—many of whom were seniors with conservative investment objectives—concentrate their accounts in a complex mortgage-backed security known as an inverse floating rate collateralized mortgage obligation (CMO), resulting in more than \$2 million in customer losses;¹⁴ and
- ▶ a broker who recommended concentrated investments in high-risk business development companies to customers (including customers over the age of 60), resulting in more than \$1 million in losses.¹⁵

Similar to transactions in complex products, buying or selling options can be risky for retail investors who trade options without understanding their vocabulary,¹⁶ strategies and risks. Like the concerns associated with complex products, these concerns may be heightened when retail investors make self-directed decisions through online platforms without the assistance of a financial professional. Investors may use options strategies in a portfolio for a number of prudent reasons, including to hedge current positions¹⁷ and for income generation.¹⁸ Investors may also use options to speculate on the future price of a stock—whether up or down—and be able to do so by committing less funds up front than in buying or selling the underlying stock.¹⁹ However, options also have significant risks that investors may not always fully understand.²⁰ Members should consider whether investors understand the various risks of trading options,²¹ including the following:

- ▶ Options have risk driven by unexpected market movements. For uncovered call writers (sellers) there is risk of unlimited potential loss if the market rises sharply.²² For uncovered put writers (sellers), there is risk of losses if the market

falls sharply. Excluding any premium collected, uncovered puts will typically incur a loss if the underlying closes below the strike price. Losses for uncovered puts reach a maximum when the stock price falls to or near zero.²³

- ▶ Investors purchasing puts and calls may not recoup any of their premium if the stock price fails to move as expected. There is risk of these investments becoming nearly worthless significantly prior to expiration if the market rises (for long puts) or falls (for long calls) sharply.
- ▶ Options have risk driven by the time to expiration of the option. Options lose value over time and once the option expires “out of the money,” it is worthless. There is also a risk at expiration if the investor does not have the funds to exercise an in-the-money option.²⁴
- ▶ Options have risk driven by exercise provisions, such as exercise style.²⁵
- ▶ For writers (sellers) of options, the risks can include the assignment of the option.²⁶

The above list is not exhaustive. Options and options strategies are routinely being developed and some risks are not apparent until there has been significant experience with them.

To address concerns with options, FINRA's options rule sets forth the approval process with which members must comply when opening a customer's brokerage account for options, as well as the requirement of ongoing specific supervisory reviews for options accounts.²⁷ FINRA enforces these and other applicable obligations and has sanctioned members and financial professionals for rule violations involving options. In 2020 and 2021, for example, FINRA sanctioned:

- ▶ a broker who recommended an unsuitable options trading strategy to two retail customers, leading to more than \$1.6 million in net losses;²⁸
- ▶ a broker who recommended that a retired customer in his 70s use funds in his retirement account to engage in an unsuitable options strategy, including selling uncovered or “naked” put options, resulting in more than \$10,000 in losses;²⁹ and
- ▶ a member that provided false information to customers about the risks associated with options spread transactions, leading to more than \$5 million in customer losses.³⁰

FINRA's Efforts to Address Complex Products and Options

Guidance

Over the years, FINRA has adopted rules and provided guidance to address the risks complex products and options pose. As noted above, we published *Regulatory Notice 12-03* to broadly discuss complex products and provide guidance regarding, among others, compliance procedures for complex products. We emphasized that the complexity of a product often necessitates more member firm scrutiny and supervision, and we advised members to apply heightened supervision for complex products. We recommended that a member periodically assess complex products that the member offers to determine that their performance remains consistent with the manner in which the member is selling them, and provide comprehensive training for registered representatives that sell complex products. We also noted that, when recommending complex products to retail customers, members should consider whether a less complex product could achieve the same result. Significantly, we emphasized the importance of considering a customer's financial sophistication to transact in complex products and encouraged members to employ an account opening approval approach, similar to that required for options, when considering an account to trade in complex products.

We also have published numerous *Regulatory Notices* to address specific complex products, such as structured products,³¹ leveraged and inverse ETPs,³² principal protected notes,³³ commodity futures-linked ETPs,³⁴ reverse convertibles,³⁵ volatility-linked ETPs³⁶ and oil-linked ETPs.³⁷ These *Notices* have focused on the particular risks related to the unique features of each of those products and have provided guidance urging members to adopt procedures for vetting such products and for supervising the sale and marketing of the products, particularly to retail investors. In 2021, moreover, we issued *Regulatory Notice 21-15*, reminding members of important steps a member must perform in connection with approving an investor to trade options, including, among others, that the member must perform due diligence on the customer and collect information about the customer to support a determination that options trading is appropriate for the customer regardless of whether the account is self-directed or advised.³⁸ We reiterated that we view the "appropriateness" standard for approving accounts to trade in options as comparable to a suitability standard as used in Rule 2360(b)(19).³⁹ We also reminded members that options accounts are subject to specific supervisory reviews, including reviewing the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved.

In addition to issuing industry guidance, FINRA has released a number of publications providing important information about complex products, as well as options, directed specifically to retail investors.⁴⁰

Product-Specific Rules

FINRA has developed a comprehensive framework of rules to address specific products, including options, security futures, direct participation programs (DPPs), deferred variable annuities (VAs), as well as index, currency index, and currency warrants. The rules governing options,⁴¹ security futures⁴² and warrants⁴³ impose, among others, account opening requirements irrespective of whether a recommendation has been made; specific suitability requirements when recommending these products, including a reasonable belief that the customer has the knowledge and experience to evaluate the risks involved and the financial ability to bear these risks;⁴⁴ specific principal registration and supervision requirements; position limits; exercise limits; reporting of positions to the Large Options Positions Reporting system; authority for FINRA to impose additional restrictions; disclosure, confirmation and account statement requirements; specific record-keeping requirements; and specific communications requirements.

The rule governing DPPs imposes specific procedures and factors to consider when recommending these products, restrictions on non-cash compensation paid in connection with the sale of these products, specific disclosures, and diligence where members participate in a public offering of DPP.⁴⁵ The rules governing variable insurance contracts also impose specific procedures and factors to consider when recommending these products, restrictions on non-cash compensation paid in connection with the sale of these products and specific content standards for variable contract communications.⁴⁶ They further impose specific requirements when recommending VAs, including principal review and approval obligations; specific written supervisory procedures reasonably designed to achieve compliance with the rule; and specific training requirements.⁴⁷

We remind members to review their obligations under these product-specific rules, as well as under Reg BI, and to determine whether their policies and procedures continue to reflect the investor protection goals that these rules seek to achieve.

Strong Risk-Based Examination Program

Complementing this comprehensive regulatory framework, FINRA conducts risk-based examinations using a dynamic approach to identify potential problematic activity involving complex products and options. As we have repeatedly noted in our annual Report on FINRA's Examination and Risk Monitoring Program, we regularly focus on members' practices surrounding complex products and options.⁴⁸ In general, our examinations review relevant communications and disclosures made to customers and use advanced analytics to review customer account activity to ensure that recommendations in these products are in the best interest of the retail customer given their investment profile and trading history. Our examinations also evaluate supervisory systems and controls members establish to mitigate risks,

including with respect to these products and across various account types (e.g., self-directed accounts and those that are serviced by a financial professional). The evaluations may include assessments of the adequacy of related written supervisory procedures, the role of new or complex product committees, use of enhanced supervisory and compliance tools, including exception or activity reports, and any relevant training conducted by the member for their registered representatives and supervisors.

FINRA is in the process of conducting targeted examinations to review members' practices and controls related to the opening of options accounts and related areas, including account supervision, communications and diligence.⁴⁹ Although that work is ongoing, FINRA notes below a few themes that are arising as the review is underway:

- ▶ **Account Opening.** Initial observations indicate potential gaps in identification of red flags in customer representations of trading experience, where members' policies require minimum levels of experience for advanced level option accounts.
- ▶ **Disclosure Practices.** Most members rely only on the delivery of "Characteristics and Risks of Standardized Options" (also known as the Options Disclosure Document or ODD) issued by the Options Clearing Corporation (OCC) to provide customers with information related to the risks of trading options,⁵⁰ but there is a wide range of practices by members in the provision of educational materials in addition to the ODD specific to risks surrounding complex options transactions and the mechanics of options expiration.
- ▶ **Options Exercise Procedures.** FINRA staff also initially noted varying practices concerning cut-off times for customers to submit options exercise instructions. Specifically, FINRA's options rule provides that option holders have until 5:30 p.m. Eastern Time (ET) on the business day of expiration to make a final decision to exercise or not exercise an expiring option.⁵¹ The rule also provides that members may set a time earlier than 5:30 p.m. ET by which customers must submit exercise instructions. In practice, FINRA found that members have set various early cut-off times and the communication of such cut-off times is not clear or consistently applied. A customer's lack of knowledge of a member's cut-off time for submission of contrary exercise decisions on expiration day may greatly impact the customer's ability to profit from moves in the underlying security on which an option is based, due to after-market activity in those underlying instruments, or the ability to make an informed investment decision such as hedging against potentially significant losses.⁵²

SEC's Efforts Regarding Complex Products

Like FINRA, the SEC has long raised concerns with the risks complex products pose.⁵³ Most recently, in October 2021, SEC Chair Gary Gensler directed SEC staff to study the risks of complex ETPs and to present recommendations for potential SEC rulemaking to address those risks.⁵⁴ The SEC has also previously considered rulemaking to address complex products. For example, in 2015, the SEC requested comment on ETPs generally, noting their increased prevalence and soliciting comment regarding, among other things, the ways in which broker-dealers market ETPs, especially to retail investors and the extent to which individual investors understand the nature and operation of ETPs.⁵⁵

When adopting Reg BI, the SEC emphasized the importance of understanding the terms, features and risks of complex products, such as inverse and leveraged ETPs, in order to establish a reasonable basis to recommend these products to retail customers.⁵⁶ The reasonable basis portion of Reg BI's Care Obligation requires the broker-dealer or associated person to use reasonable diligence, care, and skill to understand the nature of the recommended security or investment strategy involving a security, as well as the potential risks, rewards and costs of the recommended security or investment strategy. It also requires a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers based on that understanding.⁵⁷ Similar to FINRA's suitability rule,⁵⁸ a broker-dealer could violate the reasonable basis portion of Reg BI's Care Obligation by not fully understanding the recommended security or investment strategy, even if the security or investment strategy could have been in the best interest of at least some retail customers.⁵⁹ Reg BI and the fiduciary obligation of investment advisers as described in the 2019 Commission Interpretation Regarding Standard of Conduct for Investment Advisers suggest that firms apply heightened scrutiny when assessing whether recommendations of potentially high-risk products are in a retail customer's best interest.⁶⁰

In 2019 the SEC proposed sales practices rules that would require broker-dealers and SEC-registered investment advisers to exercise due diligence in approving a retail customer's or client's account to buy or sell shares of certain "leveraged/inverse investment vehicles" before accepting an order from, or placing an order for, the customer or client to engage in such transactions.⁶¹ Subsequent to that proposal, the SEC Chair and the directors of the Divisions of Investment Management, Corporation Finance and Trading and Markets published a Joint Statement Regarding Complex Financial Products and Retail Investors.⁶² The joint statement noted the SEC staff's concern that retail investors are independently selecting complex products for which they may not fully appreciate the unique characteristics and risks. It stated that the SEC staff would review the effectiveness of the existing regulatory requirements in protecting investors—particularly those with self-directed accounts—who invest in leveraged/inverse products and other complex products, and recommend potential new rulemakings, guidance or other policy actions, if appropriate.

Further, the SEC's Division of Examinations has noted that it will continue to focus on complex products in its examinations, including examining that broker-dealers are meeting their legal and compliance obligations when providing retail customers access to complex strategies, such as options trading and complex products.⁶³ The SEC has also brought recent enforcement cases with respect to the sales of complex ETPs,⁶⁴ and has issued follow-on guidance and numerous investor-focused publications focused on various complex products.⁶⁵

Complex Products: Non-U.S. Jurisdictions

Regulators outside of the U.S. also have sought to strengthen investor protections surrounding the sale of complex products. For example, regulations and guidelines under the European Union's (EU) Markets in Financial Instruments Directive (MiFID II) provide that firms should adopt robust and objective procedures, methodologies and tools to appropriately consider the different characteristics and relevant risk factors, including graduated levels of complexity, of each investment product they recommend, and match this with an investor's information.⁶⁶ For "non-advised" accounts trading complex products, MiFID II regulations require firms to assess the appropriateness of the investment and to issue a warning if the investor does not have the necessary knowledge and experience to understand the risks involved in relation to the specific investment service or product.⁶⁷ To assist in the classification of complex products for purposes of assessing appropriateness, the European Securities and Markets Authority (ESMA) has issued guidelines specifying the criteria for the assessment of debt instruments and structured products, which incorporate structures, including embedded derivatives, that make it difficult for clients to understand the risks involved.⁶⁸

Canadian securities regulators have recently enhanced their know-your-product suitability obligations and product due diligence guidance, through which firms can determine that a particular security may not be appropriate for retail investors or a subset of investors because it has complex or unique features that make it difficult for investors to fully understand.⁶⁹ In addition, Canadian securities regulators recently issued guidance regarding order execution only accounts, noting that the limited ability for staff to directly handle orders eliminates an opportunity to identify potentially problematic orders or patterns prior to the entry of the order to a marketplace and stressing that dealer policies and procedures must be reasonably designed to ensure that dealers meet regulatory obligations to clients and to the market generally.⁷⁰

Hong Kong's regulators explicitly define complex products and provide minimum information and types of warning statements that must be provided to investors.⁷¹ Hong Kong's regulators recently issued a circular to remind intermediaries of the requirements governing selling practices for insurance-linked securities, including suitability rules for complex products.⁷²

Moreover, a growing number of financial regulators, including in the EU, Australia and the United Kingdom, have introduced product governance obligations to ensure product development is client focused and distribution is consistent with an identified target market for the product. Through product intervention rules, these foreign regulators also can prohibit or impose restrictions on the marketing, distribution or sale of certain financial products where a significant retail investor protection concern is determined to exist. Common restrictions include leverage limits, margin close-out requirements, standardized risk warnings, negative balance protection, and prohibitions on mass marketing and monetary incentives to clients.⁷³

Increase in Trading in Complex Products and Options

While regulators have focused their efforts to address complex products and options, we remain concerned with the risks they pose, particularly when the data show that overall trading in complex products may be on the rise.

For example, the structured retail products market in the U.S. continues to see strong growth, with one commonly cited market data source indicating continued record volumes of products launched.⁷⁴ Defined outcome ETFs, first launched in 2018, have grown to nearly 150 ETFs with almost \$10 billion in market value, which is significant given their novelty and complexity in a very competitive market.⁷⁵ Structured annuities, often referred to as registered index-linked annuities (RILAs), which also offer certain structured note-type exposures in an insurance vehicle, have seen rapid growth.⁷⁶ While the number of geared ETPs and the market value they represent have remained fairly stable, some of these products are often among the most actively traded ETPs. It appears that retail investors continue to purchase these instruments.

Similarly, listed options trading volume has grown to over 38.6 million contracts a day on average, more than 30 percent higher than the 29.5 million contracts traded per day in 2020 and almost 100 percent higher than the 19.8 million contracts per day traded in 2019.⁷⁷ Although the volume of trading in these products has significantly changed, the core rules governing options accounts, which are uniform across the options exchanges and FINRA,⁷⁸ have remained largely unchanged since they were put in place following an SEC study of oversight of the options markets in 1978.⁷⁹ At that time, an investor could only transact in options through contact with a registered professional and on a limited number of exchange floors. Today, after being approved for options, self-directed investors can actively trade online through multiple exchanges without engaging with individuals or seeking professional advice.

In light of the continued concerns regarding complex products and options, accompanied by the increased activity in complex products and options and evolving retail customer access, FINRA is soliciting comment on effective practices that members have developed for managing the risks complex products and options

raise, particularly those accessible to self-directed retail investors, and whether the current regulatory framework is appropriately tailored to address the concerns complex products and options raise.

Request for Comment

Complex Products

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?
2. What practices have firms developed and implemented that have proved effective with respect to supervising sales and trading of complex products, including in self-directed accounts? For example, have members implemented and, if so found effective, any of the following measures with respect to complex products:
 - a. Enhanced account approval processes before an account may trade in complex products?
 - b. Requirements that a customer complete training or a learning course before approval to trade in certain complex products?
 - c. Additional disclosures or educational materials on complex products?
 - d. Required customer attestations regarding knowledge and experience?
 - e. Restrictions or limitations on retail customer access to complex products (e.g., limiting access to high-net worth or other categories of customers)?
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?
4. What are effective practices by members for reviewing advertising with respect to complex products?
5. How do members assess financial professionals’ understanding of specific products?
6. Should any of the current product-specific requirements (e.g., account opening requirements irrespective of whether a recommendation has been made; specific standard of care requirements when recommending these products; specific principal registration and supervision requirements; position limits; exercise limits; disclosure, confirmation and account statement requirements; or specific record-keeping requirements) apply more generally to complex products?

7. Should different or additional requirements be applied with respect to complex products? For example, regardless of whether a recommendation has been made, should FINRA:
 - a. Require members to make a reasonable assessment of whether a product is “complex” before allowing a retail customer to transact in the product?
 - b. Require members to implement an account approval process before the retail customer’s account may transact in any product that the firm has reasonably assessed to be complex? If so, should that process be modeled on FINRA’s options rule account approval process or a different process? Please explain.
 - c. Impose other obligations before the retail customer’s account may be approved to transact in complex products, such as requiring:
 - i. The member to provide the retail customer with general, plain language, educational materials about the common characteristics and risks of complex products?
 - ii. Retail customers to demonstrate their understanding of those common characteristics and risks of complex products by completing a knowledge check and, if the customer fails to show the requisite knowledge, requiring the completion of a learning course and additional assessment?
 - iii. Principal approval for a retail customer account to transact in complex products?
 - d. Once a retail customer’s account is approved generally for complex products, should continuous or periodic obligations apply, such as:
 - i. Before transacting in any particular complex product, or periodically while the customer holds the complex product, requiring retail customers to review disclosures regarding the characteristics and risks of the specific product and attest that they have read and understand them?
 - ii. Requiring members to periodically reassess the retail customer’s account to ensure that the initial account approval remains appropriate?
- c. Would the aforementioned obligations unduly or appropriately restrict investor access to complex products?
- d. Should comparable standards apply to other investment intermediaries, such as investment advisers or insurance agencies, that provide access to or recommend to individual customers transactions in complex products?

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?
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?
10. Should additional supervisory obligations apply with respect to complex products and retail customers, such as requiring members to implement:
 - a. Heightened supervision for recommendations of complex products to retail customers?
 - b. Policies and procedures to help ensure that retail customers possess the requisite understanding of the complex product and its risk prior to allowing such investment, including in self-directed accounts?
 - c. Testing relating to the implementation of those policies and procedures, including the testing of automated systems that are used as part of that implementation process?
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?
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?⁸⁰

Options

1. What practices have proved effective with respect to compliance with the options requirements, including supervision, disclosure and account approval requirements?
2. Are there additional requirements that should be added to the existing options requirements? For example:
 - a. Current SRO options rules (*e.g.*, FINRA Rule 2360(b)(16)) require that a member must approve a customer to trade options and requires the member to exercise due diligence to ascertain the essential facts relative to the customer to determine if it is appropriate to approve the customer to trade options. Members have implemented this requirement in varying ways. Many members have developed a system of options “levels” ranging from less risky options and strategies to more risky options strategies based on the customer’s risk tolerance, investing experience and upon the customer opening a margin account. Members also have developed processes to determine when a customer may “move up” to the next level of options trading. Should specific standards apply for the kinds of options and strategies that are permitted at a given level and standards for a customer to be approved for each level?
 - i. What kind of options should be permitted for each level?
 - ii. What should the standards be to approve a customer for each level?
 - iii. Should members be required to make a suitability determination for each level regardless of whether the account is recommended or self-directed?
 - iv. Should members be required to make a determination whether a customer should be permitted to use margin for each option level where margin is required, regardless of whether the account is recommended or self-directed?
 - v. Should members be expected to provide specified information and customers to meet specified objective criteria, such as having a certain number of years of trading experience or having a specific amount of equity in their account prior to trading options? Should members be required to provide additional information and for customers to meet additional objective criteria (for example a higher level of equity or more years of trading experience) as the level of options trading increases? If so, what information should a member be required to provide and what information should a member obtain in order to determine if the account is appropriate to trade options?

- b. Should members be required to have a conversation with each customer, regardless of whether an account is self-directed or options are being recommended, prior to approval to trade options to ensure that it is appropriate to approve the customer to trade options? How would this best be implemented for a customer who has an online account?
- c. Should periodic reassessment of the retail customer's account be required to ensure that the initial account approval for options trading remains appropriate?
- d. Should targeted communications, such as push notifications to self-directed retail customers, regarding options be subject to specific restrictions? For example, should they be restricted unless certain conditions have been satisfied, including, for example, that the account has been approved for options?
- e. Currently, Rule 2220(c)(1) requires that all retail communications issued by a member concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus be submitted to the Advertising Regulation Department of FINRA at least ten calendar days prior to use. Should members be required to file all retail communications that promote or recommend options or options strategies prior to use?
- f. Should members be required to provide customers specific educational or training materials in addition to what is already required before a customer, including a self-directed customer, may be approved to trade options?
 - i. After receiving additional education or training, should customers be required to demonstrate to the member the customer's understanding about options? What form of demonstration would be most efficient and effective? Should the demonstration include answering questions or otherwise demonstrating understanding of options?
 - ii. SRO options rules (e.g., FINRA Rule 2360(b)(16)) require that a member give a customer the Options Disclosure Document⁸¹ prior to approval for options trading. Should a simple, perhaps single page, disclosure document that focuses on the key risks of trading options be required to be delivered, in addition to the ODD, to a customer prior to approval for options trading?
 - A. What are the key risks that should be communicated other than those set forth in the ODD?
 - B. Should members also receive an acknowledgement of understanding of the risks of trading options from customers before approving a customer to trade options? Should this requirement to acknowledge an understanding of the risks of trading options be required to be completed every year?

- g. Should members be required to display total position risk for retail customers holding positions in options, or holding positions that have been entered into as the result of an options assignment? For example, where a customer holds positions in both an option and the underlying instrument, or in multiple options on the same security, such that the exercise of an option may act to limit overall risk, should members display the maximum potential loss and gain for each underlying asset based on their combined option and underlying exposure?
 - h. SRO options rules (e.g., FINRA Rule 2360(b)(20)) detail the supervisory requirements for options, as we explained in *Regulatory Notice 21-15*. Should members conduct heightened or more frequent supervisory review after they have approved a customer, including a self-directed customer, to trade options? What form of heightened supervisory review would be most efficient and effective? If distinct from heightened supervisory review, what form of frequent supervisory review would be most efficient and effective? How often should the review occur?
 - i. If in reviewing an account, a member identifies that a customer has entered into an options transaction (such as a spread traded above parity⁸²) whereby it is impossible for the customer to profit from the transaction, should the member be required to pause or suspend the customer from further transacting in options or certain kinds of options?
 - j. SRO options rules (e.g., FINRA Rule 2360(b)(23)) provide that option holders have until 5:30 p.m. ET on the business day of expiration, or, in the case of a standardized equity option expiring on a day that is not a business day, on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. Members may not accept exercise instructions after 5:30 p.m. ET. However, members may establish fixed procedures as to the latest time they will accept exercise instructions from customers. Some members have set a deadline for customers to make an exercise decision prior to 5:30 p.m. ET deadline, for example by 4:00 p.m. ET. Should all members give investors to 5:30 p.m. ET to make a final exercise decision?
 - k. Would any of the aforementioned obligations unduly or appropriately restrict investor access to options?
3. Should comparable standards apply to other investment intermediaries, such as investment advisers or insurance agencies, that provide access to or recommend to individual customers transactions in options?

Endnotes

1. SEC Chair Gary Gensler has directed the SEC to study this area and recommend changes, if appropriate. See, SEC Chair Gary Gensler, [Statement on Complex Exchange-Traded Products](#) (Oct. 4, 2021) (hereinafter Gensler Statement on Complex Products). FINRA intends to coordinate its response to this request for comment with the SEC's development of its regulatory approach to this topic.
2. Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact or edit personally identifiable information from comment submissions. FINRA also reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters.
3. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
4. See *Regulatory Notice 12-03* (Complex Products, Heightened Supervision of Complex Products) (Jan. 2012).
5. See *id.* Some industry participants have advocated for an ETP classification system that would identify and categorize certain ETPs with complex structures or embedded risks as exchange-traded notes (ETNs), exchange-traded commodities (ETCs) or exchange-traded instruments (ETIs), rather than as exchange-traded funds (ETFs). See, e.g., [Blackrock comment](#) in response to SEC Joint Statement Regarding Complex Financial Products and Retail Investors (Apr. 14, 2021).
6. Beyond these products and exchange-listed futures on related crypto assets, retail investors seeking exposure to crypto assets (outside of directly owning them) may have alternatives through, for example, over-the-counter securities in the form of investment trusts holding a crypto asset. However, such products may present further complexities in terms of how they are structured as well as being potentially less liquid and having performance that can diverge from that of the underlying crypto asset.
7. The first Bitcoin Futures ETF, which the SEC declined to block, began trading on the NYSE on October 20, 2021. Options on this ETF were listed shortly after. A second was launched on October 22, 2021. The first mutual fund focused on Bitcoin Futures was launched in July 2021.
8. See, e.g., FINRA Investor Alert, [Interval Funds – 6 Things to Know Before You Invest](#) (Jan. 23, 2018).
9. See e.g., [SEC Investor Bulletin: Interval Funds](#) (Sept. 25, 2020).
10. For example, some ETPs are registered as investment companies under the Investment Company Act of 1940 and are subject to its protections. On the other hand, other complex products, such as exchange-traded notes, structured notes, and commodity pools are structured differently and, regardless of their relative complexity or risk, are not subject to the requirements of the Investment Company Act.

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11. See [Gensler Statement on Complex Products](#) (referencing the SEC's Asset Management Advisory Committee's recommendations to the SEC and FINRA designed to improve the ETP ecosystem, Preliminary Recommendations of ETP Panel Regarding COVID-19 Volatility: Exchange-Traded Products, Asset Management Advisory Committee (Sept. 16, 2020)).
12. See Calton & Associates, Inc., AWC No. 2018060466201 (May 17, 2021).
13. See Independent Financial Group, LLC, AWC No. 2018059223401 (Apr. 8, 2021).
14. See American Independent Securities Group, LLC, AWC No. 2018060267902 (March 29, 2021).
15. See Kevin Marshall McCallum, AWC No. 2019062569501 (June 17, 2021).
16. See FINRA Investor Insights, [Options A-Z: The Basics to the Greeks](#), regarding options terminology (June 4, 2015).
17. For example, an investor may hedge with a protective put option to limit losses on downward movement of the underlying stock that is owned by the investor. The investor could purchase a put option at a strike price below the current price of the stock. If the price of the stock falls below the strike price of the option, the investor can exercise the put option and sell their shares at the strike instead of the current market price. This strategy could limit the impact to a position when the stock price falls.
18. For example, an investor may engage in covered call writing whereby an investor can write (sell) a call option on a stock the investor owns to earn the options premium.
19. For example, an investor may purchase a \$12 call option, for a total investment of \$1200, overlying a stock that is valued at \$60 per share, which provides some exposure to the price movement in the underlying stock for less than the cost of buying 100 shares at \$60 (\$6,000). One option contract typically covers 100 shares of underlying stock.
20. See [Characteristics and Risks of Standardized Options](#) (also known as the Options Disclosure Documents or "ODD") (Oct. 2021) for more detailed description of risks with options.
21. In addition, Reg BI requires members who make recommendations, including recommendations to trade in options, to open an options account, or to engage in an investment strategy involving options, to, among other things, have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that customer's investment profile and the potential risks, rewards and costs associated with the recommendation.
22. When the investor does not own the offsetting position in the underlying security, the investor may have to acquire the security if the price of the underlying security rises and the buyer of the option seeks to exercise it. The maximum loss could be unlimited as there is no cap on how high the price of the underlying security can rise.

23. For example, if an investor sells a put option with a strike price of \$50 and the underlying security falls to \$1 at expiration, the investor should expect to be assigned on their put, thereby purchasing 100 shares at \$50 for a total of \$5,000. While the value of the position would be \$100 based on current share price (\$1 per share), the investor would have an unrealized loss of \$4,900, excluding the premium received.
24. Listed equity options are settled with physical delivery of the underlying security, not cash settled. For example, if an investor purchases a call option in a cash account with a strike price of \$50 and the underlying security is trading at \$60 per share at expiration, the investor should not expect a “payout” of \$1,000 for the price difference between the strike price and the closing price at expiration. Instead, the investor must have \$5,000 in order to purchase the shares at expiration based on the strike price. While the value of the position would be \$6,000 based on current shares price (\$60 per share), the investor would have an unrealized gain of \$1,000. Alternatively, the investor could sell the option on expiration, which may not necessarily maximize the potential gains.
25. The options contract will specify when the option may be exercised. European-style options provide the option may only be exercised on its expiration date while American-style options may be exercised at any point during the life of the contract. Option holders must be sure to understand the exercise provisions and exercise mechanics. See also [Information Notice 2/3/21](#) (Exercise Cut-Off Time for Expiring Options).
26. See FINRA and OCC Staff Investor Insights: Trading Options: Understanding Assignment, *infra* note 40, regarding assignment which is the seller's obligation to fulfill the terms of the contract by either selling or buying the underlying security at the exercise price.
27. See Rule 2360(b)(16) and FINRA Rule 2360(b)(20), respectively.
28. See Cesar Hurtado, AWC No. 20170558909 (Aug. 6, 2021).
29. See Mason Gann, AWC No. 20180574252 (Jan. 27, 2020).
30. See Robinhood Financial LLC, AWC No. 2020066971201 (June 30, 2021).
31. See [Notice to Members 05-59](#) (NASD Provides Guidance Concerning the Sale of Structured Products) (Sept. 2005).
32. See [Regulatory Notice 09-31](#) (June 2009).
33. See [Regulatory Notice 09-73](#) (Dec. 2009).
34. See [Regulatory Notice 10-51](#) (Oct. 2010).
35. See [Regulatory Notice 10-09](#) (Feb. 2010).
36. See [Regulatory Notice 17-32](#) (Oct. 2017).
37. See [Regulatory Notice 20-14](#) (May 2020).
38. See [Regulatory Notice 21-15](#) (April 2021).
39. See *id.* at n.7 (noting that, in the context of evaluating customer information for the purposes of approving a customer to trade options, FINRA views the options trading approval standard, which is expressed as appropriateness in [Notice to Members 80-23](#), as comparable to a suitability standard as used in Rule 2360(b)(19)).

40. FINRA has issued a number of investor-focused publications on complex products and options (e.g., FINRA Investor Insight: [Know Before You Invest: Volatility-Linked Exchange-Traded Products](#) (October 26, 2017); FINRA Investor Insights: [The Lowdown on Leveraged and Inverse Exchange-Traded Products](#) (Nov. 22, 2016); Investor Alert: [Alternative Funds Are Not Your Typical Mutual Funds](#) (June 11, 2013); Investor Alert: [Exchange-Traded Notes—Avoid Unpleasant Surprises](#) (July 10, 2012); Investor Alert: [Structured Notes With Principal Protection](#) (June 2, 2011); Investor Alert: [Reverse Convertibles: Complex Investment Vehicles](#) (July 29, 2011); Investor Insights, [Options A-Z: The Basics to The Greeks](#) (June 4, 2015); FINRA and OCC Staff Investor Insights: [Trading Options: Understanding Assignment](#) (Dec. 14, 2020).
41. See FINRA Rule 2360 (Options); FINRA Rule 2220 (Options Communications).
42. See FINRA Rule 2370 (Security Futures); FINRA Rule 2215 (Communications with the Public Regarding Security Futures).
43. See FINRA Rule 2350 Series (Trading in Index Warrants, Currency Index Warrants and Currency Warrants).
44. Reg BI would also apply to the extent that a broker-dealer or associated person recommends such a product, or an investment strategy involving the product, to a retail customer.
45. See FINRA Rule 2310 (Direct Participation Programs).
46. See FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities); FINRA Rule 2320 (Variable Contracts of an Insurance Company); and FINRA Rule 2330 (Members' Responsibilities Regarding Deferred Variable Annuities).
47. See FINRA Rule 2330. As noted above, Reg BI would also apply to the extent that a broker-dealer or associated person recommends a VA to a retail customer.
48. See, e.g., [2022 Report on FINRA's Examination and Risk Monitoring Program](#) (Feb. 9, 2022), ("FINRA will continue to review firms' communications and disclosures made to customers in relation to complex products, and will review customer account activity to assess whether firms' recommendations regarding these products are in the best interest of the retail customer given their investment profile and the potential risks, rewards and costs associated with the recommendation.").
49. See [FINRA Targeted Examination Letter on Option Account Opening, Supervision and Related Areas](#) (Aug. 2021).
50. See *supra* note 20.
51. See Rule 2360(b)(23).
52. See e.g., FINRA and OCC Staff Investor Insights: [Trading Options: Understanding Assignment](#) (Dec. 14, 2020), *supra* note 40.
53. In addition to complex products, and of historic significance, at the advent of the computerized brokerage systems, the SEC issued guidance regarding potential investor protection risks posed by such systems and emphasizing broker-dealer obligations, particularly in the case of risky investments. See Notice of Commission Views

on Computer Brokerage Systems, Securities Exchange Act Release No. 21383 (October 9, 1984), 49 FR 40159, 40161 (October 15, 1984) (“Because these systems provide investors greater flexibility in trading, the Commission believes it is important that a broker-dealer use a high degree of care in making its initial determination regarding an investor’s financial qualifications and his suitability for large and risky investments.”).

54. See Gensler Statement on Complex Products. Commissioners Allison Lee and Caroline A. Crenshaw also issued a joint Statement on Complex Exchange-Traded Products, noting the significant investor protection issues and potential systemic risks raised by the sale of complex ETPs, recommending that the Commission update the rules for these products, and outlining principles that should apply to an updated regulatory framework. See Commissioners Lee and Crenshaw, [Statement on Complex Exchange-Traded Products](#) (Oct. 4, 2021).
55. See SEC Request for Comment on Exchange-Traded Products, Securities Exchange Act Release No. 75165 (June 12, 2015), 80 FR 34729, 34742 (June 17, 2015).
56. See Regulation Best Interest, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019) (Reg BI Adopting Release).
57. See Regulation Best Interest, Securities Exchange Act Rule 15l-1(a)(2)(ii)(A).
58. FINRA’s suitability rule (FINRA Rule 2111) applies to recommendations that are not covered by Reg BI (i.e., recommendations to non-retail customers). See Rule 2111.08.
59. See Reg BI Adopting Release, 84 FR at 33376.
60. See Reg BI Adopting Release at 33376. Note that Reg BI and FINRA Rule 2111 apply when a broker-dealer or its associated persons make securities recommendations (including, in the case of Reg BI, recommendations of types of accounts); neither Reg BI nor Rule 2111 apply in the absence of a recommendation, such as where a retail investor invests entirely on their own accord in complex products through a self-directed account. See also Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Act Release No. 5248 (June 5, 2019), 84 FR 33669, 33673-74 (July 12, 2019).
61. See SEC 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, Securities Exchange Act Release No. 87607 (November 25, 2019), 85 FR 4446 (January 24, 2020).
62. See U.S. Securities and Exchange Commission, [Joint Statement Regarding Complex Financial Products and Retail Investors](#) (Oct. 28, 2020).
63. See SEC Division of Examinations, [2021 Examination Priorities](#), (March 3, 2021).
64. See SEC press release, [SEC Charges Investment Advisory Firms and Broker-Dealers in Connection with Sales of Complex Exchange-Traded Products](#) (Nov. 13, 2020); see also SEC Division of Examinations Public Statement on Recent Enforcement Matters Involving “VIX-Related” and Other Complex Exchange Traded Products (ETPs) (Nov. 16, 2020).

65. The SEC's Office of Investor Education and Advocacy has published numerous Investor Bulletins on complex products in recent years. See, e.g., Investor Bulletin: [Leveraged Investing Strategies – Know the Risks Before Using These Advanced Investment Tools](#) (June 10, 2021); Updated Investor Bulletin: [Indexed Annuities](#) (July 31, 2020); [Leveraged Loan Funds – Investor Bulletin](#) (Nov. 20, 2019); [Updated Investor Bulletin: Variable Annuities](#) (Oct. 30, 2018); Investor Bulletin: [Exchange Traded Notes](#) (ETNs) (Dec. 1, 2015); Investor Bulletin: [An Introduction to Options](#) (March 18, 2015) and Investor Bulletin: [Opening an Options Account](#) (March 18, 2015).
66. See European Securities and Markets Authority (ESMA), [Guidelines on Certain Aspects of the MiFID II Suitability Requirements](#), (paragraphs 69-87) (June 11, 2018).
67. See MiFID II Articles 25(3)-(4) and MiFID II Delegated Regulation Articles 55-57. See also ESMA, [Guidelines on Certain Aspects of the MiFID II Appropriateness and Execution-Only Requirements](#) (Jan. 3, 2022).
68. See ESMA, [Guidelines on Complex Debt Instruments and Structured Deposits](#) (Feb. 4, 2016). See also ESMA, [Guidelines on Certain Aspects of the MiFID II Appropriateness and Execution-Only Requirements](#), *supra* note 67.
69. See The Ontario Securities Commission, [Reforms to Enhance the Client-Registrant Relationship](#) (Client Focused Reforms), Vol. 42, Issue 40 (Oct. 3, 2019); see also Investment Industry Regulatory Organization of Canada (IIROC) Notice GN-3300-21-001, [Guidance Note on Product Due Diligence and Know-Your-Product](#) (Dec. 31, 2021).
70. See IIROC Notice GN-3200-21-002, [Guidance Respecting Order Execution Only Accounts as a Form of Third-Party Electronic Access to Marketplaces](#) (Oct. 14, 2021).
71. See Hong Kong Securities and Futures Commission, [Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission](#) (SFC), art. 5.5 (2020); see also SFC, [Guidelines on Online Distribution and Advisory Platforms](#), ch. 6 (July 2019) ; see also SFC, [Minimum information to be provided and warning statements](#) (June 12, 2019).
72. See Hong Kong Monetary Authority and Hong Kong Securities and Futures Commission, [Circular to Intermediaries: Distribution of Insurance-Linked Securities and Related Products](#) (Oct. 11, 2021) . These requirements include product due diligence, taking into account factors such as the products' nature, features, risks, any restrictions on the sale of the products and target investors, and suitability; ensuring that the risk/return profile of the product matches the financial situation, objectives, experience, risk tolerance, and other circumstances of the client; providing sufficient and accurate product information to clients, as well as clear and prominent warning statements; and staff training on products and how to disclose their nature, features and risks to clients.
73. Some examples where product intervention powers have been used include binary options and contracts for difference (e.g., ESMA, most of the EU National Authorities, UK FCA, and Australian Securities and Investments Commission (ASIC)); turbos/a type of leveraged product (Dutch Financial Markets Authority); crypto-asset derivatives (UK FCA); crypto-asset

- exchange traded notes (UK FCA); contingent convertible instruments and CoCo funds (UK FCA); and mini-bonds (UK FCA). [European Securities and Markets Authority—Product Intervention](#) (provides list of interventions by ESMA and the National Competent Authorities). See FCA Handbook, [Conduct of Business Sourcebook](#), COBS 4.14, 22.3-22.6; ASIC Corporations (Product Intervention Order—Binary Options) [Instrument 2021/240](#) (Apr. 1, 2021).
74. See SRP News, [US market 2021: Record Performance Despite Summer Slowdown](#), (Sept. 22, 2021).
75. See Allan Roth, [Are Defined Outcome ETFs For You?](#) (Oct. 6, 2021).
76. See Lavanya Nair, [US Insurance Regulator Concerned with Rila Growth](#), (Oct. 19, 2021).
77. See Options Clearing Corporation [data](#). Data for 2021 includes trade dates between January 1 and October 15, 2021.
78. See, e.g., Cboe Rules 9.1-9.9 and Nasdaq Rules Option 10, Section 6 – 10, 13.
79. See Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96-IFC3, December 22, 1978). After the approval of Cboe as the first options exchange, the SEC released a report on the efficacy of SRO and SEC oversight of the burgeoning options markets. The study called for close cooperation among the SROs and the SEC, and recommended several specific actions designed to correct the deficiencies found by the SEC in surveillance and sales practices. These recommendations led to the uniform options conduct rules adopted by the SROs.
80. The SEC's Digital Engagement Practices (DEPs) request for comment addresses DEPs and Reg BI, including how broker-dealers consider the impact of DEPs when determining whether recommendations are made for purposes of Reg BI. See Securities Exchange Act Release No. 92766 (August 27, 2021), 86 FR 49067 (September 1, 2021) (Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice). As noted above, FINRA intends to coordinate its response to this request for comment with the Commission's development of its regulatory approach.
81. See *supra* note 20.
82. For example, if the investor enters into an option spread transaction whereby the premium exceeds the maximum potential profit.