HISTORY

In 1996, a grassroots movement known as the NASD Dissident Movement was formed. In the early days, smaller broker-dealers were becoming concerned that major NASDAQ market makers were conspiring with segments of the regulatory community to thwart their smaller competitors' growth. This fear was fostered by what the smaller firms saw as inexplicable delays in approving any request to expand their business --- be it new lines of business, additional branches or registered representatives. Moreover, those smaller firms also became troubled by the frequency and pettiness of regulatory examinations and investigations of their businesses. One high-profile manifestation of this atmosphere was the dispute between the so-called SOES Bandits and the NASDAQ market makers, and also the dispute between the alternative trading systems that were to become ECNs and NASDAQ (and its major market makers).

In 1996 the United States Department of Justice's Antitrust Division brought historic charges against 24 of NASDAQ's top market making firms. In that same year, the SEC lambasted the NASD/NASDAQ in a critical 21(a) Report that detailed years of harassment and abuse that was tolerated by the regulator. Finally, civil litigants entered into a much-publicized seven-figure settlement with the major NASDAQ firms because of the negative impact of their anticompetitive/anti-consumer practices. It was from that forge that the NASD Dissident Movement emerged in 1998 to field a slate of four candidates to contest the NASD's Board of Governors election, of which two dissident candidates pulled off an historic, upset victory and from that moment, the landscape was forever changed.

Immediately below are posted some seminal documents from the NASD Dissident Movement that are as relevant today as they were almost twenty-five years ago. They have been revised to reflect FINRA in place of NASD and outdated items have been deleted. I hope that the quasi re-publication of these materials will dispel allegations that the movement is of recent origin or that it is simply dedicated to ending all regulation --- which is an absurd and erroneous proposition.

FINRA CONTESTED ELECTION PLATFORM
Drafted in 2002
Revised in 2022

Whereas, it is resolved among the firms and registered persons constituting FINRA Dissidents' Grassroots Movement (FDGM) that the only remaining effective means of promoting meaningful reform at FINRA is to nominate candidates to contest the open seats on the FINRA Board of Governors; Whereas, it is resolved that said candidates support uncompromised consumer protection, fair regulation, competitive markets, and corporate governance reform; Accordingly, FDGM publishes this Platform, which its candidates endorse.

GOVERNING PRINCIPALS
FINRA RULE 2010 AND
FINRA RULE 2020

RULE 2010

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

RULE 2020

No member shall affect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

STATEMENT OF PRINCIPLES

Wall Street has had a troubling history of the uneven application of its rules and regulations, which often results in regulators coming down more heavily on smaller firms than larger ones. Clearly, securities regulation can be hijacked to further political and anticompetitive agendas. As stated in 1996 in the SEC's 21(a) Report:

> *The NASD's failure to investigate and pursue aggressively clear indications of possible violations seriously undermined its ability to ensure compliance with the NASD's own rules as well as the requirements of the federal securities laws. As discussed below, the consequences for the Nasdaq market of this failure were exacerbated by the undue influence exercised by Nasdaq market makers over various aspects of the NASD's operations and regulatory affairs. This influence made vigorous enforcement by the NASD even more essential to the fair operation of the Nasdaq market.*

It is our observation that FINRA functions too much as a clique in which entrenched management, larger firms and familiar faces maintain a stranglehold on the organization. FINRA must set a larger table and become more inclusive of the majority of its member firms and some 600,000 plus disenfranchised registered persons. The wrong-minded, and at times arrogant, policies and mistakes of the past cannot be undone unless we introduce fresh ideas and new blood.

Sadly, FINRA has become a ponderous bureaucracy that is largely unresponsive to our needs and frequently fails to understand the economic realities of our marketplace. While FINRA pursued a plan of global expansion (the American Stock Exchange, London, Japan, etc.), the needs of its core constituency --- it's typical small member firm of approximately 150 registered persons and less --- were given short shrift. Worse, the bill for that folly has now come due, and we can ill afford such extravagances during these difficult economic times.

Today, self-regulation feels more like something imposed from above, rather than the participatory undertaking intended. Further, a cadre of professional regulators has implemented questionable bureaucratic measures that unnecessarily complicate the members' access to their SRO. Without question, Wall Street must maintain a vigilant, effective, and uncompromised system of regulation. It is the hallmark of the integrity of our markets. As painful as regulation may be at times, it is a worthwhile cost to pay for the public's confidence.

Nonetheless, when regulators are seen as biased and unfair, those they regulate do not voluntarily participate in the process. This deprives the regulator of the eyes and ears of industry insiders. It often deters individuals from coming forward at the nascent stage of a problem and seeking the regulator's cooperation in resolving the situation. Finally, it prevents the development of an effective coalition to anticipate trouble, to mediate disputes, and to promulgate reasonable regulations.

In the final analysis, FINRA is a self-regulatory organization with an important role to play. It was not meant to be a mere proxy for the Securities and Exchange Commission nor for any state regulator. It must be a full and vibrant partner within the framework of Wall Street's regulation. Its present policies and management make the ascendancy to that role impossible.

FINRA DISSIDENT MOVEMENT AGENDA
AS PROMULGATED IN 2002

I. OFFICE OF THE INDUSTRY'S ADVOCATE

We call for the creation of the Office of the Industry's Advocate (OIA), which would be a permanent office staffed with full-time employees and overseen by a board of elected members.

- Impact Studies. OIA would be charged with undertaking impact studies of all FINRA proposals to ensure that adequate consideration has been given to the economic burden such initiatives impose upon member firms and their registered persons.

- Observer Status/Amicus Briefs. The Director of OIA would be given observer status at FINRA Board meetings and would be authorized to submit amicus briefs during any contested disciplinary proceedings or appellate review.

- FINRA Roundtable. OIA would house the FINRA Roundtable, which would be a businessperson's forum for the amicable discussion and resolution of intra-industry disputes. The FINRA Roundtable will serve as a mechanism to improve drafting of controversial rule proposals and their ultimate implementation.

II. DISTRICT AND NATIONAL NOMINATING POLICIES

Corporate governance reform is not something to be prescribed for all companies besides FINRA.

- Member firms/individuals with certain proscribed disciplinary histories should be barred from holding elective FINRA office for specified periods of time.

- FINRA elections should be robust and meaningful debate encouraged. As such, there should be no active support (beyond FINRA's announced endorsement of candidacy) provided by FINRA, any Board, or any Nominating Committee for officially nominated candidates. Such activity is an improper use of members' funds and an inappropriate politicizing of a regulatory organization. Nothing here is meant to suggest that officially nominated candidates should not be permitted to speak up on their own behalf.

- Finally, no FINRA Board member should be permitted to serve on any other for-profit Board. We are entitled to the full attention of our Board members and they should be especially free from conflicts derived from multiple service. The business of regulating FINRA's members is not a part-time undertaking or an easy job.

III. INVESTIGATION/EXAMINATION PRACTICES

We call for the uniform codification of many investigation/examination practices by FINRA staff that we find are unfairly arbitrary and capricious.

- Uniformity. Towards achieving that goal, we would require a uniform form for the transmission of notices of investigations/examination. Said forms should not vary from District to District and Examiner to Examiner, but should model themselves upon other standard notices, e.g., SEC Forms 1661 and 1662. Said forms should include, at a minimum, a precise Fifth Amendment statement that FINRA does not recognize this privilege, a warning as to the consequences of not appearing or refusing to cooperate, and a clear statement of the right to retain independent legal counsel.

- Bill of Rights. We would promulgate an FINRA Bill of Rights for member firms and their registered persons to be observed during investigations/examinations. Among the practices we will seek to codify are acceptable practices for scheduling and conduct of on-the-record (OTR) interviews. We will pointedly seek the creation of an impartial arbiter to resolve OTR disputes that arise between witnesses and staff. Similarly, we will insist upon the codification of fair practices for requesting the physical appearance of a witness. Notably we will seek to require that OTRs be held at a FINRA office within state where RR presently resides, or is presently employed, or where mutually acceptable. In the event that circumstance dictates that one cannot be physically present at an OTR, it may be conducted electronically via ZOOM or its equivalent. Further, FINRA demands for travel outside of the state of residence or employment must be reimbursed at a rate equivalent to that required of state and federal prosecutors.

IV. REGULATORY SANCTIONS

We would seek a membership vote on whether monetary sanctions should be based upon a percentage of gross revenues or similar baseline. We believe that today's system of fines is unfairly biased in favor of major, national firms. The imposition of a flat, across-the-board fine, e.g., $25,000 fine, may be a hardship on smaller firms where it may be viewed as nuisance value by a larger one.

V. LARGE FIRM BIAS

We will also request a special study into the frequency with which management of major, national firms (in comparison to their counterparts at smaller firms) are personally fined and/or suspended. Similarly, we will ask for a similar study of the frequency and duration of on-the-record interviews for comparable executives. In addition, we will ask that sanctions imposed on management personnel of major, national firms be included in FINRA's monthly published disciplinary history report along with their names as are published about similar personnel employed by small and medium sized firms.

VI. GOVERNANCE ISSUES

In light of the current publicized governance issues that have affected the public's opinion of management's focus at FINRA, we want to strengthen the public's confidence in the idea of a fair and equitable marketplace. With this in mind FDGM proposes that the following points be addressed and enforced.

- All Governors must fully disclose outside relationships, in private and public sectors. Said disclosures are to be posted on FINRA's website.
- No contracts are to be awarded to any company or individual with whom any Governor has a disclosed relationship without issuing prior notice on FINRA's website.
- All contracts should be open to competitive bid.
- Contracts over $250,000.00 should be posted on FINRA's website.
- All minutes, attendance, and member's individual voting records of board meetings should be posted on FINRA's website.
- No board member may be removed without due process.

VII. BOARD TRANSPARENCY

- Although the buzzword "transparency" is bandied about, the BOG remains as opaque as it has been in the past. Board meeting announcements precede each meeting with "topics" that will be discussed. After each meeting, an email to members relates which topics have been discussed with no content that could affect each and every member. So, in essence, there is almost no real Board transparency at all.