

November 4, 2019

VIA ELECTRONIC DELIVERY

Jill M. Peterson
Assistant Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2019-022; Release No. 34-86558

Dear Ms. Peterson,

This letter is respectfully submitted by the European Fund and Asset Management Association¹ (“EFAMA”) in response to amendments proposed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to FINRA Rule 5130.

EFAMA is writing to indicate its support for the alternative conditions in the Proposed Amendments that would allow funds to satisfy the exemption for foreign investment companies from the definition of “restricted person” under Rule 5130 (the “Alternative Conditions”).² EFAMA believes that the Alternative Conditions recognize the practical and operational limitations that exist in the ownership structures of many market participants and provide a suitable way for them to determine whether they are among the kinds of entities that FINRA intended to prohibit from participating in new issues. In particular, EFAMA welcomes FINRA’s recognition of the need for the Alternative Conditions to ease access to new issues by foreign investment companies and appreciates the extent to which the Alternative Conditions attempt to

¹ EFAMA is the representative trade association for the European investment management industry at large. EFAMA was founded in 1974 under the name “European Federation of Investment Funds and Companies” (“FEFSI” was its French acronym) and changed its name to EFAMA in 2004 to reflect a focus on representing the interests of European investment funds and asset management firms, as well as those of national industry trade associations.

² Under the proposed rule, a fund would satisfy the exemption for foreign investment companies if “(1) the investment company is listed on a foreign exchange for sale to the public or authorized for sale to the public by a foreign regulatory authority; (2) no person owning more than five percent of the shares of the investment company is a restricted person, the investment company has 100 or more direct investors, or the investment company has 1,000 or more indirect investors; and (3) the investment company was not formed for the specific purpose of investing in new issues.” See 84 Fed. Reg. 39029, 39033 (Aug. 8, 2019).

achieve that goal. However, EFAMA continues to urge that equal treatment be afforded to non-U.S. investment companies such that they can compete on the same terms as U.S. investment companies.

In addition, EFAMA appreciates the efforts made to allow Foreign Employee Retirement Benefits Plans to access new issues, but notes that the thresholds to qualify for the new Foreign Employee Retirement Benefits Plan exemption are too restrictive and contain too many conditions to be useful. However, the plans expect to be able to invest in foreign investment companies that would qualify under the Alternative Conditions, thus limiting the need to qualify under the Foreign Employee Retirement Benefits Plan exemption.

EFAMA understands that other interested parties submitted comment letters³ expressing concerns regarding other aspects of the Proposed Amendments and that such concerns were the focus of FINRA's most recent submission to the SEC responding to such comments and amending the Proposed Amendments ("Amended Submission").⁴ To the extent that the concerns raised in the Amended Submission are not easily resolvable, EFAMA urges the SEC to separately approve the Alternative Conditions while any other considerations associated with the Proposed Amendments through the Amended Submission are addressed.

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EFAMA appreciates the opportunity to comment on the Proposed Amendments. Please feel free to contact me ([REDACTED] or [REDACTED]), Julien Bourgeois ([REDACTED] or [REDACTED]), or Robert Rhatigan ([REDACTED] or [REDACTED]) with any questions about this submission.

Very truly yours,



Elliott R. Curzon

³ Letter from Elliott R. Curzon on behalf of Private Investor Coalition, Inc. (Aug 29, 2019), available at <https://www.sec.gov/comments/sr-finra-2019-022/srfinra2019022-6045276-191267.pdf>; Letter from Dechert LLP (Aug. 29, 2019), available at <https://www.sec.gov/comments/sr-finra-2019-022/srfinra2019022-6047657-191347.pdf>.

⁴ See SR-FINRA-2019-022, Partial Amendment No. 1 (Oct. 30, 2019).