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January 31, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2019-030 (Proposed Rule Change to Amend the Membership Application Program (“MAP”) Rules to Help Further Address the Issue of Pending Arbitration Claims, as well as Arbitration Awards and Settlement Agreements Related to Arbitrations That Have Not Been Paid in Full in Accordance With Their Terms)

Dear Ms. Countryman:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing related to proposed amendments to specified MAP rules to help address the issue of pending arbitration claims, as well as arbitration awards and settlement agreements related to arbitrations that have not been paid in full in accordance with their terms. The Commission published the proposed rule change for public comment in the Federal Register on December 30, 2019,¹ and received two comments in response to the rule filing.²

The commenters expressed their general support for the proposed rule change. SJU, however, suggested that either in this rulemaking or a subsequent rulemaking, FINRA consider a more expansive approach to address the issue of unpaid settlements by including those related to investor complaints regardless of whether the settlements were entered into during arbitration. SJU explained that a firm or associated person may decide to settle a complaint with an investor before initiating arbitration, noting that the risk of a member

¹ See Securities Exchange Act Release No. 87810 (December 20, 2019), 84 FR 72088 (December 30, 2019) (Notice of Filing of File No. SR-FINRA-2019-030).

² See Letter from Steven B. Caruso, Maddox Hargett & Caruso, P.C., to Vanessa Countryman, Secretary, SEC, dated January 7, 2020; and letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor Clinical Legal Education, St. John’s University School of Law, to Vanessa Countryman, Secretary, SEC, dated January 21, 2020 (“SJU”).

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firm or its associated person failing to satisfy the terms of such settlement raises the same concerns for investor protection as those that the proposed rule change seeks to address.

FINRA recognizes that the issue of unpaid awards is not unique to the FINRA arbitration forum or the broker-dealer industry—customers can have claims that arise from other forums or that are against other types of financial firms. To help encourage a continued dialogue about addressing the challenges of customer recovery across the financial services industry while directly informing the further enhancement of recovery in FINRA’s forum, FINRA issued a White Paper and additional data regarding the circumstances under which awards may be unpaid, along with a discussion of potential regulatory and legislative responses.³ This rule filing is one of the ways FINRA is proceeding to implement additional steps to strengthen its rules relating to this topic. Thus, FINRA has determined not to amend the proposed rule change as suggested by SJU. However, FINRA welcomes continued engagement to discuss further ways to enhance customer recovery.

FINRA believes that the foregoing responds to the commenters to the rule filing. If you have any questions, please contact me at (202) 728-8104, email: Victoria.Crane@finra.org.

Best regards,

/s/ Victoria Crane

Victoria Crane
Vice President and Associate General Counsel

³ See FINRA’s White Paper entitled *FINRA Perspectives on Customer Recovery*, https://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf. To provide additional transparency about the FINRA arbitration forum and better inform discussions regarding customer recovery, FINRA also makes available additional data on unpaid arbitration awards arising in the forum for the past five years. This data is available on the FINRA website. See <https://www.finra.org/arbitration-mediation/statistics-unpaid-customer-awards-finra-arbitration>. In addition, FINRA has published a list of firms and associated persons responsible for unpaid arbitration awards. See <https://www.finra.org/arbitration-mediation/member-firms-and-associated-persons-unpaid-customer-arbitration-awards>. This information also appears on a firm’s or individual’s BrokerCheck[®] record.