



Cornell University
Law School

Lawyers in the Best Sense

WILLIAM A. JACOBSON
Clinical Professor of Law
Director, Cornell Securities Law Clinic
138 Hughes Hall
Ithaca, NY 14853
T: 607-255-6293
F: 607-255-8887
E: waj24@cornell.edu

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Via Electronic Filing

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: Release No. 34-88600; File No. SR-FINRA-2020-011 (Proposed Rule Change to Address Brokers with a Significant History of Misconduct)

Dear Secretary Countryman:

The Cornell Securities Law Clinic (“the Clinic”) submits this comment to support the Financial Industry Regulatory Authority (“FINRA”) proposal (the “Rule Proposal”) to amend the FINRA Rule 9200 Series (Disciplinary Proceedings) and the 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review) to allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent member firm or respondent broker, and require a respondent brokers member firm to adopt heightened supervisory procedures for such broker, when a disciplinary matter is appealed to the National Adjudicatory Council (“NAC”) or called for NAC review.¹

The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

The current Rule 9200 and Rule 9300 Series allow FINRA to bring disciplinary action against member firms, associated persons of member firms or persons within FINRA’s

¹ The Rule Proposal also proposed amendments to FINRA Rule 9520 Series (Eligibility Proceedings), FINRA Rule 8312 (FINRA BrokerCheck Disclosure), and FINRA Rule 1000 Series (Member Application and Associated Person Registration). While we do not directly address those proposed changes in this letter, the Clinic also supports those changes.

jurisdiction for alleged violations of FINRA rules, SEC regulations or federal securities laws.² A Hearing Officer is assigned to oversee the disciplinary proceeding and appoint a Hearing Panel. For each case the Hearing Panel, or in the case of default decisions, the Hearing Officer will issue a written decision that makes findings and imposes sanctions if there are violations.³ Any party can appeal a Hearing Panel or Hearing officer decision to the NAC. When a Hearing Panel or Hearing Officer decision is on appeal or review before the NAC, any sanctions imposed by the Hearing Panel or Hearing Officer decisions, including bars and expulsions, are automatically stayed and not enforced against the respondent during the pendency of the appeal or review proceeding.⁴

The amendments expand the scope of the Rule Series greatly. Under proposed Rule 9285(a), the Hearing Officer who participated in the underlying disciplinary proceeding may impose any conditions or restrictions on the activities of a respondent during the appeal as the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm. The Hearing Officer who participated in the underlying disciplinary proceeding would have jurisdiction to rule on a motion seeking conditions or restrictions, notwithstanding the appeal or call for NAC review.⁵ A respondent would have the right to file an opposition or other response to the motion within ten days after service of the motion, unless otherwise ordered by the Hearing Officer, and must explain why no conditions or restrictions should be imposed or specify alternative conditions and restrictions that are sought to be imposed and explain why they are reasonably necessary for the purpose of preventing customer harm.⁶

The Clinic supports the amendments to Rule 9200 Series and 9300 Series. The Clinic is supporting proposed Rule 9285 which gives the Hearing Officer the ability to impose conditions and restrictions during the appeal/review period of a NAC violation. The way the rule is currently written, any action by the Hearing Officer is stayed while it is under appeal/review. This leaves a gap between the conditions imposed before appeal/review and time the review ends. During this gap, there is no supervision of a potentially harmful broker-dealer or registered representative. The Rule Proposal change closes the gap of no supervision significantly, and allows for proper oversight. This drastically lowers the risk to investors.

Investor protection should be the primary concern when dealing with registered person misconduct. The Hearing Officer is in the best position to ensure the ongoing protection of investors pending appeal. This is not only to remedy the harm that has already been done, but also to address the issue of potential harm in the future.

² Text of Proposal at 7.

³ Text of Proposal at 8.

⁴ Text of Proposal at 8-9.

⁵ Text of Proposal at 9.

⁶ Text of Proposal at 10-11.

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The Hearing Officer is limited to conditions or restrictions that are reasonably necessary. This prevents the Hearing Officer from overstepping their boundaries and penalizing the respondent for unrelated or unnecessary issues. Since the Hearing Officer is the person most familiar with the issue, they have firsthand knowledge and experience and would be the most appropriate vehicle to provide limitations and supervision. Furthermore, since the respondent would have to file a response to the Hearing Officers motion, it makes them engage more with the disciplinary process. Continued engagement can help to reduce their chances of recidivism.

The Clinic appreciates the opportunity to comment on the Rule Proposal. For the foregoing reasons, the Clinic supports the Rule Proposal and the additional protection they afford investors.

Respectfully submitted,

William A. Jacobson

William A. Jacobson, Esq.
Clinical Professor of Law
Director, Cornell Securities Law Clinic

Ayomikun Loye

Ayomikun Loye
Cornell Law School, Class of 2020