



December 28, 2020

Via E-Mail to rule-comments@sec.gov
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Vanessa A. Countryman, Secretary

Re: File Number SR-FINRA-2020-041
FINRA Proposed Rule Change to: (1) adopt FINRA Rule 4111 (Restricted Firm Obligations); (2) adopt FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111); and (3) amend FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) (the “Proposal”)¹

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)² appreciates the opportunity to comment on the Proposal. The Proposal would impose tailored obligations, including financial set-asides, on firms that cross specified, numeric disclosure-event thresholds. SIFMA initially commented on the Proposal in July 2019 in connection with FINRA’s publication of Regulatory Notice 19-17.³

As stated in our initial comment letter, SIFMA supports the Proposal to the extent it has the ancillary effect of incentivizing firms and their associated persons to comply with their regulatory obligations and to pay their arbitration awards. Notwithstanding our general support, we offer the following further commentary and recommendations.

¹ 85 Federal Register 78540 (December 4, 2020), available at <https://www.finra.org/sites/default/files/2020-12/SR-FINRA-2020-041-federal-register-notice.pdf>.

² SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

³ SIFMA comment to FINRA re: Regulatory Notice 19-17 (July 1, 2019), available at <https://www.sifma.org/resources/submissions/regulatory-notice-19-17-protecting-investors-from-misconduct/>.

The Proposal should ensure that firms can independently self-evaluate their status as a prospective *Restricted Firm*.⁴

In our initial comment, we recommended that the Proposal should be more transparent so that firms have the same ability as FINRA to calculate whether they meet the thresholds for designation as a *Restricted Firm*.

In response, FINRA stated that they would announce in a Regulatory Notice the first *Evaluation Date* of their calculation no less than 120 days before the first *Evaluation Date*, and that FINRA would also announce that subsequent *Evaluation Dates* would be on the same month and day each year.⁵ We appreciate this enhancement because knowing the *Evaluation Date* will allow firms to calculate the *Evaluation Period* and also identify the *Registered Persons In-Scope*.

We also commented that firms cannot identify with certainty or precision what disclosures and reportable events in the *Preliminary Identification Metrics* that FINRA is counting as part of its annual calculation. Thus, firms cannot independently replicate FINRA's calculation. In response, FINRA agreed that additional guidance and resources could facilitate firms' independent calculations and undertook to explore ways to provide helpful resources, including:

- Mapping the *Disclosure Event* and *Expelled Firms Association Categories* to the relevant questions on the Uniform Registration Forms;
- Making available, year-round, a worksheet that member firms can populate with the number of *Registered Persons In-Scope*, the number of disclosure events in each category, and the number of *Registered Persons Associated with Previously Expelled Firms*, to generate information about whether the member firm meets or is close to meeting the Preliminary Criteria for Identification; and
- Making available to member firms a list of expelled firms.⁶

We believe it is critical that firms have an independent mechanism to replicate FINRA's calculation. It would allow firms to self-monitor and self-correct. It would encourage firms to focus greater attention on the Proposal's metrics and take proactive corrective measures, thereby furthering the stated purposes of the Proposal.

Accordingly, we recommend that FINRA make a firm commitment to making the three bulleted resources above available to member firms on or prior to the prospective promulgation and implementation of the rules set forth in the Proposal.

⁴ Italicized terms herein have the meaning as defined in the Proposal.

⁵ Proposal at p. 93, 210 available at <https://www.finra.org/sites/default/files/2020-11/SR-FINRA-2020-041.pdf>.

⁶ Proposal at p. 94, 211.

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Thank you for the opportunity to comment. If you have any questions or would like to further discuss these issues, please contact the undersigned.

Sincerely,

Handwritten signature of Kevin M. Carroll in cursive script.

Kevin M. Carroll
Managing Director and
Associate General Counsel

cc: ***via e-mail to:***

Robert L.D. Colby, Chief Legal Officer, FINRA

Richard W. Berry, Executive Vice President and Director FINRA-DR