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U.S. Securities and Exchange Commission
Officer of Investor Education and Advocacy
100 F. Street, NE
Washington, D.C. 20549

RE: Re-Proposed Rule on Exemption for Certain Exchange Members

I am submitting this comment in response to the Securities and Exchange Commission's re-proposed rule regarding the *Exemption for Certain Exchange Members* to express concern regarding the Securities and Exchange Commission's ("SEC") expanded role for the Financial Industry Regulatory Authority ("FINRA"). Since this proposed rule will require "any broker or dealer registered with the [SEC] to become a member of a national securities association," and establishes that FINRA will be "the only registered national securities association," I fear this may lead to an inefficient marketplace.¹ As such, I advocate for the SEC to cease the proposed expansion of FINRA's role in financial markets.

The SEC's first proposed rule required changes at the request of the U.S. Government of Accountability Office ("GAO"). The GAO analyzed the SEC's reviews of FINRA and determined that those reviews were not documented.² The GAO argued that documentation is critical: "[b]y establishing such measures, policies, and procedures, the SEC would gain information that would allow it to better monitor and assess the impact of its reviews of FINRA, better evaluate FINRA responses, and more clearly communicate concerns to FINRA."³ The SEC implemented these recommendations and re-proposed the rule.⁴

The re-proposed rule "require[s] affected broker-dealers to become FINRA members."⁵ The SEC highlighted that because of drastically changing markets,⁶ it is necessary to require

¹ Statement on Re-Proposed Amendments Regarding Exemption from National Securities Association Membership, Chair Gary Gensler (July 29, 2022).

² U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105367, SECURITIES REGULATION: SEC COULD TAKE FURTHER ACTIONS TO HELP ACHIEVE ITS FINRA OVERSIGHT GOALS (2021).

³ *Id.*

⁴ *Id.*

⁵ Statement on Proposed Amendments to Exchange Act Rule 15b9-1, Commissioners Hester M. Peirce and Mark T. Uyeda (July 29, 2022).

⁶ The original rule, adopted in 1965, worked effectively since most broker-dealers were registered with a single exchange where they met specific criteria. Today, the SEC argues that the proposed rule adapts with modern technology.

firms and individuals to join FINRA as it ensures federal reporting.⁷ Although I support updating a rule that is “nearly as old as the first-ever cell phone,”⁸ the re-proposed rule fails to require FINRA to possess contemporary monitoring technology.

FINRA’s ability to monitor complex financial markets is inefficient and unreliable. For example, FINRA recently sued BofaS, a multinational investment banking division of Bank of America, for failure to report over-the-counter positions.⁹ Although FINRA requires members to report large options to FINRA, FINRA relies on the truth of these reports; “FINRA *relies on* accurate reporting of transactions in order to maintain the integrity of the markets.”¹⁰ Further, FINRA fined BofaS \$5 million for an untimely report.¹¹ Nonetheless, FINRA’s practices prevent them from executing reliable and efficient measures. The fact that FINRA must rely on truthful, accurate, and timely reports illustrates the need for evolution. Indeed, commissioners of the SEC questioned FINRA’s expanded role:

The assumption that seems to underlie the proposal—that FINRA should be the frontline regulator of all broker-dealers—risks sending the message that the Commission is comfortable surrendering its primary responsibility to oversee the markets to FINRA. The Commission could use the tools at its disposal to monitor the activity of firms that operate across markets but do not raise the retail investor protection concerns at the core of FINRA’s competence. The Consolidated Audit Trail gives the Commission comprehensive surveillance capabilities over the equity markets, and the Commission could use its authority to require TRACE reporting by these firms as noted above. With these tools at its disposal, the Commission could oversee these markets effectively, so what is to be gained by further expanding FINRA’s role in our markets?¹²

For these reasons, I strongly suggest that the SEC, concerning the SEC’s re-proposed rule, does not allow FINRA to be the sole regulator. In the alternative, I urge the SEC to adopt two policy measures. First, the SEC must establish contractual accountability to avoid gaps in regulation.¹³ This requires FINRA to enforce measures more vigorously and improve its

⁷ Chair Gary Gensler, *supra* note 5.

⁸ *Id.* (internal quotations omitted).

⁹ Press Release, Financial Industry Regulatory Authority, FINRA fines BofaS Securities, Inc. \$5 million for Large Options Position Reporting Failures (Sept. 12, 2022).

¹⁰ *Id.*

¹¹ *Id.* (emphasis added).

¹² Commissioners Hester M. Peirce and Mark T. Uyeda, *supra* note 5.

¹³ Linda Rittenhouse, *Self-Regulation in the Securities Markets: Transitions and New Possibilities*, CFA Institute (2013), <https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-securities-markets-transitions-new-possibilities.ashx>.

monitoring technology. Second, the SEC must request that FINRA take advantage of expertise to have quick and reliable oversight.¹⁴

Respectfully,

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¹⁴ *Id.*