



Securities Arbitration Clinic
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Via email to rule-comments@sec.gov

Ms. Vanessa Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **File Number SR-FINRA-2020-041**

Dear Ms. Countryman:

Thank you for the opportunity to comment on FINRA's proposed rules changes concerning the imposition of additional obligations on firms with a significant history of misconduct pursuant to Rule 4111. We are writing this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law (the "Clinic"). The Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents aggrieved investors with small dollar claims and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules protecting investors from firms and brokers that engage in misconduct.

The Clinic has been supportive of FINRA's proposed adoption of Rule 4111 imposing additional obligations on firms with significantly higher levels of risk-related disclosures.¹

The Clinic is supportive of the adoption of Rule 4111 requiring members firms with a high degree of risk towards the investing public to maintain a deposit account from

¹ See St. John's University School of Law Comment on Regulatory Notice 19-17, July 1, 2019, available at https://www.finra.org/sites/default/files/2019-07/19-17_StJohns_comment.pdf.

which withdrawals would be restricted. Requiring “Restricted Firms” to maintain a restricted deposit account will ensure that investors are compensated, and the firm does not escape FINRA’s jurisdiction should future misconduct occur.

Additionally, the Clinic supports the two rebuttable presumptions that a member firm must overcome when the Department determines that a consultation is necessary, i.e., that the member firm should be designated as a Restricted Firm and that it should be subject to the maximum Restricted Deposit Requirement. The rebuttable presumptions allow the member firm to establish that it should not be designated as a Restricted Firm or that it should not be subject to the maximum Restricted Deposit Requirement, while protecting investors.

The Clinic also supports the no-stay provision of the proposed Rule 4111. The provision serves to protect investors from further harm while the hearing is pending and provides immediate safeguards. Restricted Firms would have to comply with the requirements of the rule while the hearing is pending, which prevents firms from draining their funds to leave covered arbitration awards unpaid. Without the no-stay provision, Restricted Firms—that already pose a high risk to investors—would be free to engage in additional misconduct without having money set aside to pay customer arbitration awards.

The Clinic further supports the restrictions against withdrawals from the Restricted Deposit account absent FINRA’s prior consent. Allowing a Restricted Firm to freely withdraw funds from the Restricted Deposit account defeats the purpose of the account since it would allow the firm to exhaust the funds, potentially leaving arbitration awards unpaid. Additionally, the Clinic supports the proposed presumptions that occur when a Restricted Firm applies for a withdrawal from the Restricted Deposit account. The presumptions ensure that investors with unpaid arbitration awards and settlements will be compensated first and will incentivize firms to pay unpaid arbitration awards and settlements.

Additionally, we believe that the proposed rule will incentivize Restricted Firms and firms that are close to meeting the Preliminary Criteria for Identification to change their behavior and risk profile. Faced with the possibility of being subject to the Restricted Deposit Requirement and additional regulations, firms may seek to conduct their own calculations to determine whether they are close to meeting the Preliminary Criteria for Identification. The self-calculation provides the firm with an opportunity to change their compliance procedures so that they do not fall within the thresholds. Alternatively, these firms may seek to obtain insurance coverage to reduce their risk profile. Nonetheless, the possibility of additional regulations is likely to encourage a high-risk firm to limit or end harmful activities that would otherwise harm investors.

We also strongly support FINRA’s non-exhaustive list of examples of conditions and restrictions that could be imposed on Restricted Firms. The Clinic has previously expressed its view that FINRA should consider additional obligations or restrictions including heightened supervision to ensure that firms attempt to reduce its risk profile.² Imposing additional obligations and restrictions will ensure that the firm has actually

² See *id.*

taken measures to reduce its risk level and is not merely paying for the right to be high-risk. The non-exhaustive list allows FINRA to tailor its oversight of Restricted Firms to address the high-risk conduct in which the firm is engaged, and responsively protect investors.

Given the need to protect investors from high-risk member firm and broker misconduct, the Clinic supports the proposed adoption of Rule 4111. Thank you for your consideration of this matter and the opportunity to comment on these important proposals.

Respectfully Submitted,

/s/
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/s/
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Director of the Securities Arbitration
Clinic and Professor of Clinical Legal
Education