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VIA E-Mail: rule-comments@sec.gov

July 8, 2022

Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **File Number SR-FINRA-2022-015**

Ladies and Gentlemen:

Please allow this to serve as comments of Cetera Financial Group ("Cetera") with regard to SEC File No. SR-FINRA-2022-015, regarding proposed amendments to FINRA Rule 8312. Cetera is the corporate parent of five FINRA member firms with more than 9,000 affiliated representatives. We offer these comments in hopes of providing context and possible unintended consequences for both investors and FINRA member firms if the proposed amendments are adopted.

FINRA Rule 4111 provides that if a member firm or its representatives have been involved in specified numbers of certain events (regulatory actions and securities-related complaints, litigations, or arbitration matters involving customers), the firm may be designated a "Restricted Firm". It can then be required to adopt changes to its business practices, including a mandate to post cash or marketable securities that cannot be released or utilized in the conduct of the business without permission from FINRA.

The intent of Rule 4111 is to enhance investor protection by giving FINRA additional authority to enforce compliance with its rules, encourage member firms toward more compliant business models, and better ensure that firms are able to meet their financial obligations to customers or potential claimants. Cetera has previously submitted written comments to FINRA in connection with the adoption of Rule 4111. We support both its purpose and the manner in which FINRA has approached it. A small minority of FINRA member firms have consistently demonstrated a lack of willingness and/or ability to comply with industry rules and standards of conduct. The authority vested in FINRA under Rule 4111 is somewhat extraordinary, but some circumstances require extraordinary remedies. We support any initiative that promotes compliance with FINRA rules and enhances investor protection and public confidence in the securities industry.

All of the above being said, we have specific concerns about the proposed amendments to Rule 8312. In particular, we do not believe that a FINRA determination that a firm is subject to restrictions under Rule 4111 should be publicly disclosed through the BrokerCheck system, for two specific reasons:

1. **Public disclosure of Restricted Firm status through the BrokerCheck system or otherwise is likely to undercut the effectiveness of Rule 4111.**

Rule 4111 establishes a process under which member firms can be designated as Restricted Firms. Upon receiving that designation, those firms must take actions specified by FINRA to adjust their business operations, possibly including a requirement to post assets that are subject to restrictions established by FINRA.

We believe that this framework represents an effective means of enhancing investor protection by giving FINRA the ability to create a greater level of security for customers that may have claims against the firm or its representatives. However, the proposed amendments to Rule 8312 go a step further and call for Restricted Firms to be publicly identified on the FINRA BrokerCheck system. FINRA states that it believes disclosing the names of Restricted Firms would be relevant to investors in determining whether to establish relationships with or continue to do business with them. That is almost certainly true, but it comes with a significant negative side effect: Any firm that is designated as a Restricted Firm will have an immediate stigma attached to it. The stigma may be deserved, but the negative connotation that comes with it is significant enough to increase the likelihood that the firm will fail. This would make it less able to meet its obligations to customers, and perhaps worse, increase the possibility of disorderly failure or closure. Customers may well be worse off than had the restricted status of the firm not been disclosed.

We would also note that FINRA Rule 4530 already requires FINRA member firms and representatives to notify FINRA about the matters that would form the basis of a Restricted Firm designation, and this information is generally available to the public though the BrokerCheck system. Public disclosure of Restricted Firm status adds to the information available to the public, but balancing the value of this information to customers against the potential for negative consequences to the firm militates in favor of avoiding disclosure on the BrokerCheck system.

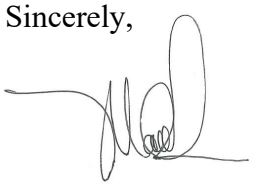
It is easy to envision a scenario in which a notice is published on BrokerCheck regarding the designation of a Restricted Firm, which is followed in short order by large numbers of customers deciding to cease doing business with it. This may create a “run on the bank” situation in which representatives and customers leave the firm quickly and cause it to fail.

2. **<u>If Restricted Firms are to be publicly identified, it should only occur after completion of a hearing or other final adjudication</u>**.

FINRA Rule 9561 establishes a process under which member firms can contest their designation as a Restricted Firm. Firms may avail themselves of a hearing process, which in some cases can be expedited. The proposed amendments to Rule 8312 provide that Restricted Firm status would be made public through the BrokerCheck system despite the fact that a hearing or decision of a hearing panel is pending. This fails to strike the correct balance between the need for investor protection and the procedural due process rights of the firm. Restricted Firm status should not be disclosed on BrokerCheck at all, but our concern about such disclosure is greatly heightened in circumstances where there has not been a final determination after a hearing. Given the potential for serious consequences upon disclosure of Restricted Firm status, it seems only fair that any such disclosure should be delayed until the entire adjudicatory process has been completed. Particularly in cases involving expedited proceedings, the rights of the firm to have a full adjudication of the facts more than outweigh the short additional period of time in which information is not made available to the public.

We appreciate the opportunity to offer comments on this important issue. If you have questions or we may offer any additional information, please let me know.

Sincerely,



Mark Quinn
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