Steven B. Caruso
Vero Beach, FL

The purpose of this letter is to provide the Securities and Exchange Commission ("SEC") with comments on the above referenced Order which was issued by the SEC on September 15, 2022 in connection with proposed rule change SR-FINRA-2022-015 that was filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") on June 3, 2022.

I am a retired attorney whose prior practice was exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry. Moreover, I am the immediate past Chairman of FINRA's National Arbitration and Mediation Committee ("NAMC") and a former public member of the NAMC – in fact, I served in both positions during two separate and distinct terms, the former Chairman of FINRA's Discovery Task Force Committee ("DTFC"), a former member of the Securities Investor Protection Corporation ("SIPC") Modernization Task Force and a former President, former member and current Director Emeritus of the Public Investors Advocate Bar Association ("PIABA").

It is my understanding that the SEC has published its Order so as to solicit comment on a proposed rule change which would, in part, amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) so as to release information on BrokerCheck as to whether a particular member firm or former member firm is *currently* designated as a "Restricted Firm" pursuant to FINRA Rule 4111 (Restricted Firm Obligations). (Emphasis Added).

It is my further understanding that, based on comments that may be received on the proposed rule change, the SEC will then determine whether the proposed rule change is consistent with the Securities Exchange Act of 1934 ("Exchange Act") and the rules thereunder so that a determination can be made to either approve or disapprove the proposed rule change.

As stated in the SEC's Order, "FINRA Rule 4111 established an annual process to designate as 'Restricted Firms' member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such firms a 'Restricted Deposit Requirement' or, in addition or in the alternative, conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest."

In addition, as further stated in the SEC's Order, according to FINRA, "the rule was designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by member firms with a significant history of misconduct" and to create "incentives for firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm."

For the reasons set forth below, it is my opinion that the proposed rule change is not consistent with the Exchange Act and the rules thereunder and that a determination should be made be to disapprove the proposed rule change.

First, as stated in the SEC's Order, "BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors."

It would, however, be inconsistent with this historical disciplinary predicate, for the proposed rule change to only release information on BrokerCheck as to whether a particular member firm or former member firm is *currently* designated as a Restricted Firm pursuant to Rules 4111 and 9561 and that when a firm is no longer designated as a Restricted Firm, *no* historical information would be displayed on BrokerCheck that the firm had been a Restricted Firm.

If, indeed, BrokerCheck is intended to help investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary *history* to investors, then the fact that a member firm was *ever* designated as a Restricted Firm is information that is clearly critical and material to investors – especially when the disclosures would be applicable to "member firms with a significant history of misconduct."

Second, the stated intention in the proposed rule change to limit the release of information on BrokerCheck as to whether a particular member firm or former member firm is *currently* designated as a Restricted Firm pursuant to Rules 4111 and 9561 would be inconsistent with the disclosure requirements on Form BD which, in questions 11E(3) and (4), requires disclosure as to whether any self-regulatory organization has "ever" either "restricted" the activities of a member firm or "otherwise restrict[ed] its activities." [See, e.g., *Form BD*, available at https://www.sec.gov/files/formbd.pdf (last visited September 20, 2022)]

If, indeed, Form BD is intended to help investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary *history* to investors, then the fact that a member firm was *ever* designated as a Restricted Firm is information that is clearly critical and material to investors – especially when the disclosures would be applicable to "member firms with a significant history of misconduct."

Based on all of the preceding, it is my opinion that the proposed rule change is not consistent with the Exchange Act and the rules thereunder and that a determination should be made be to disapprove the proposed rule change unless and until the "current" limitation is removed.

Thank you for providing me with the opportunity to submit my comments on this matter.