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Lawyers in the Best Sense

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Via Electronic Filing

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Release No. 34-95791; File No. SR-FINRA-2022-015 (Order Instituting Proceedings for Proposed Rule Regarding Release of Information on BrokerCheck Relating to a Firm Designation as Restricted)

Dear Ms. Countryman:

The Cornell Securities Law Clinic (“Clinic”) appreciates the opportunity to provide this comment letter in support of the proposal (“Rule Proposal”) to amend the Financial Industry Regulatory Authority (“FINRA”) Rule 8312 regarding the release of information to BrokerCheck relating to firm designation as a “Restricted Firm”. The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see: <http://securities.lawschool.cornell.edu>.

The Clinic supports the Rule Proposal and the goals of increasing protection for investors through access to additional information about firms. The Clinic believes that the Rule Proposal is consistent with the requirements and goals of the Securities Exchange Act of 1934 (“Exchange Act”).

I. Section 15A(b)(6) of the Exchange Act Provides Support for the Adoption of the Rule Proposal

Section 15A(b)(6) of the Exchange Act requires that FINRA rules promote principles of equitable trade, to remove impediments to and perfect the mechanism of free trade, and to protect investors.¹ The Rule Proposal would allow investors to gain more information about firms and

¹ 15 U.S.C. 78q-3(b)(6).

their regulatory histories. The increase in information allows for more equitable trade by providing investors the opportunity to better understand their firm and its past violations that may have led to the firm becoming restricted. Access to this information will allow the investors to make better informed investment decisions. The Rule Proposal helps to remove the information asymmetry which investors often face. The Rule Proposal does not place any burdensome requirements on firms, nor does it create any new rules with which the firm must comply. The Rule Proposal only makes public information which would be beneficial to consumers in choosing a firm.

Section 15A(b)(6) of the Exchange Act also requires that FINRA rules not unfairly discriminate among broker-dealers. While releasing a firm's designation may create a negative economic impact for restricted firms, release of information alone is not discrimination among firms. FINRA Rule 4111 establishes a rigorous process for designating a firm as restricted, action which is only taken when a firm has raised substantial investor protection concerns. All firms are subject to becoming restricted upon undertaking actions that merit the enhanced regulations. Any economic disadvantage felt by restricted firms is offset by the additional protections afforded to investors. Most firms, which do not have substantial investor protection concerns, will not be impacted by the rule change. Those firms which are affected have the ability to change practices in order to restore confidence.

Overall, the Rule Proposal fulfills the goals of the Exchange Act by giving consumers access to important information which will help to protect investors and promote free and equitable trade. These goals are accomplished without significant harm to firms, and without any additional requirements beyond those already within the FINRA rules.

II. Section 15A(i)(1) of the Exchange Act Provides Support for the Adoption of the Rule Proposal

Section 15A(i)(1) of the Exchange Act requires that FINRA rules establish readily accessible electronic processes to respond to inquires regarding registration information on members and associated persons.² Providing a firm's restricted status is consistent with the information already provided by BrokerCheck, such as regulatory actions, civil proceedings, and other matters which a potential investor may find relevant.

By providing information regarding a firm's restricted status through BrokerCheck, the Rule Proposal would add to the information easily accessible to the consumer, without requiring any further inquiry beyond the BrokerCheck website. Further, the Rule Proposal would provide an explanation as to the meaning of "restricted" in a firm context. This ensures that customers are not only aware of the fact that a firm is restricted, but that the customer also understands how a restricted firm came to receive the designation. Overall, the consumer will have a more accurate view of the firm they are considering, without needing to rely on expert judgment or background knowledge. With consumer access to this information, the goals of the Exchange Act are furthered by the adoption of the Rule Proposal.

² 15 U.S.C. 78q-3(i)(1).

III. Recommendations for Improving the Rule Proposal

While the Clinic would support the Rule proposal as it stands, the Clinic suggest that the information provided via BrokerCheck also include a firm's history regarding the restricted status. The additional information would further provide consumers with knowledge about a firm's history and allow for more informed investing decisions. The Clinic recognizes that withholding this information provides an incentive for a firm to correct practices in order to remove the restricted designation. However, the Clinic believes that recording a firm's history regarding the restricted status will further incentivize firms to avoid becoming restricted, while also benefiting consumers.

Conclusion

The Clinic appreciates the opportunity to comment on the Rule Proposal. For the foregoing reasons, the Clinic supports the Rule Proposal.

Respectfully Submitted,

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