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July 20, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2020-041 (Proposed Rule Change to Address Firms with a Significant History of Misconduct)

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority (“FINRA”) in further response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing.

On November 16, 2020, FINRA filed with the SEC a proposed rule change, SR-FINRA-2020-041, to: (1) adopt Rule 4111 (Restricted Firm Obligations) to require member firms that are identified as “Restricted Firms” to maintain a deposit in a segregated account from which withdrawals would be restricted, adhere to specified conditions or restrictions, or comply with a combination of such obligations; and (2) adopt a new Rule 9561 (Procedures for Regulating Activities Under Rule 4111), and amend Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), to create a new expedited proceeding to implement proposed Rule 4111.

The Commission published the proposed rule change for public comment in the Federal Register on December 4, 2020.¹ The Commission received seven comment letters directed to the rule filing.² On January 12, 2021, FINRA consented to an extension of the

¹ See Securities Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540 (December 4, 2020) (Notice of Filing of File No. SR-FINRA-2020-041).

² See Letter from Richard J. Carlesco Jr., CEO, IBN Financial Services, Inc., dated December 15, 2020 (“IBN”); Letter from Andrew R. Harvin, Partner, Doyle, Restrepo, Harvin & Robbins, LLP, to Secretary, SEC, dated December 21, 2020 (“Harvin”); Letter from Lev Bagramian, Senior Securities Policy Advisor, and Michael J. Hughes, Program & Research Assistant, Better Markets, Inc., to Vanessa A. Countryman, Secretary, SEC, dated December 28, 2020 (“Better Markets”); Letter from Lisa Hopkins, NASAA President, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary,

time period for SEC action on the proposed rule change to March 4, 2021. On March 4, 2021, FINRA submitted a response letter to the comments.³ As FINRA explained in more detail in that response to comments, four commenters generally supported the proposal,⁴ and three commenters were generally unresponsive.⁵ On March 4, 2021, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.⁶ On May 7, 2021, FINRA consented to an extension of the time period for SEC action on the proposed rule change to July 30, 2021. On May 14, 2021, FINRA filed Partial Amendment No. 1, which proposed a technical correction to the definition of “Member Firm Pending Events” in proposed Rule 4111(i)(4)(E). On July 20, 2021, FINRA filed Partial Amendment No. 2, to clarify what a Restricted Deposit Requirement would require if assets deposited in a Restricted Deposit Account decrease in value.

In its response letter to the comments, FINRA noted that several commenters proposed that FINRA disclose a firm’s status as a Restricted Firm to the public.⁷ FINRA also wrote that it was not proposing to require the public disclosure of a firm’s status as a Restricted Firm, but that “FINRA appreciates the potential value of public disclosure and

SEC, dated December 28, 2020 (“NASAA”); Letter from David P. Meyer, President, Public Investors Advocate Bar Association, to Vanessa Countryman, Secretary, SEC, dated December 28, 2020 (“PIABA”); Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated December 28, 2020 (“SIFMA”); and Letter from Ruben Huertero, Legal Intern, and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Securities Arbitration Clinic at St. John’s University School of Law, to Vanessa Countryman, SEC, dated December 28, 2020 (“St. John’s Clinic”).

³ See Letter from Michael Garawski, Associate General Counsel, FINRA Office of General Counsel, to Vanessa Countryman, Secretary, SEC, dated March 4, 2021 (“FINRA Response”).

⁴ See NASAA, PIABA, SIFMA, St. John’s Clinic.

⁵ See Better Markets, Harvin, IBN.

⁶ See Securities Exchange Act Release No. 91258 (March 4, 2021), 86 FR 13780 (March 10, 2021) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change in SR-FINRA-2020-041).

⁷ See FINRA Response, at p. 16 & n.47 (citing Better Markets, NASAA, and PIABA).

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will be considering it and other approaches . . . going forward.”⁸ In further consideration of this public disclosure issue, the FINRA Board of Governors has authorized the filing of proposed amendments to Rule 8312 (FINRA BrokerCheck Disclosure) to release on BrokerCheck information as to whether a particular member firm or former member firm is designated as a “Restricted Firm” pursuant to proposed Rules 4111 and 9561.⁹ Publicly disclosing on BrokerCheck which firms are designated as Restricted Firms would help investors make informed choices about the member firms with which they do business. In addition, FINRA commits to working with individual state securities regulators to share information concerning whether firms that operate in their individual states have been designated by FINRA as Restricted Firms, along with information concerning any obligations that have been imposed pursuant to proposed Rules 4111 and 9561 on the Restricted Firm.

If the SEC approves SR-FINRA-2020-041, FINRA would promptly thereafter file with the SEC the proposed amendments to Rule 8312.

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If you have any questions, please contact me at (202) 728-8835, email: michael.garawski@finra.org.

Best regards,

/s/ Michael Garawski

Michael Garawski
Associate General Counsel
FINRA Office of General Counsel

⁸ See FINRA Response, at pp. 16-17.

⁹ Rule 8312 governs the information FINRA releases to the public, at no charge, through its BrokerCheck system. FINRA requires member firms to inform their customers of the availability of BrokerCheck.