
Securities Arbitration
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**Via Email To pubcom@finra.org**
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, D.C. 20006-1506

**Re: Regulatory Notice 19-17**

Dear Ms. Mitchell:

The St. John's University School of Law Securities Arbitration Clinic (the "Clinic") would like to thank you for the opportunity to comment on the proposed rule change concerning the imposition of additional obligations on firms with a significant history of misconduct pursuant to proposed new rule 4111. The Clinic is a curricular offering where students represent public investors of limited means in disputes against their investment brokers.[1]

FINRA's rule proposal seeks to introduce FINRA rule 4111 to impose additional obligations on firms that have a history of misconduct or have hired employees with a history of misconduct. The new obligations are: the establishment of a "restricted deposit account" and additional conditions or restrictions that may be necessary to protect investors.

The rule proposal is an effort by FINRA to protect investors from predatory and harmful practices that some brokerage firms and brokers might employ. FINRA is attempting to not only promote investor protection, but also ensure that investors who have been harmed have access

[1] For more information, please see http://www.stjohns.edu/law/securities-arbitration-clinic.

to these “restricted deposit accounts” in their arbitration efforts. The Clinic commends FINRA’s efforts in increasing investor protection. However, the Clinic believes more must be done to prevent misconduct in the first place, as well as to ensure that recidivist brokers and firms are held accountable to investors they have harmed.

The Clinic believes that more stringent conditions should be adopted to ensure firms deemed to be “high-risk” are not harming investors. Under the proposal, FINRA contemplates that “additional conditions or restrictions” may be imposed on high risk firms, however, there are no specific additional conditions or restrictions set forth in the proposal. At a minimum, firms that are under the purview of the rule should be subject to heightened supervision obligations. Such a requirement would be beneficial and a step towards increased investor protection.

The Clinic also urges FINRA to include language in the proposed rule that would incentivize firms to maintain appropriate capital and operating account levels. Under the proposed rule, the firms have an incentive to reduce their capital levels because in the multi-factor review process they would end up not being required to deposit a large amount into the restricted deposit account due to their already low levels of capital. FINRA should ensure firms that are deemed high risk are not able to evade the obligations the rule imposes by being underfunded. Arguably, investors doing business with such a firm need even more protections. As discussed above, such firms should also be subjected to heightened supervision obligations, regardless of the deposit amount. Further, there may be other restrictions that are appropriate, such as restrictions on the types of products that the firm may sell to investors.

Additionally, firms are able to avoid coverage by the rule by firing problem employees, or undergoing a one-time staffing reduction. However, the firm was willing to hire high-risk brokers in the first place, and allowing the one-time staffing reduction will not ensure that such a firm does not remain a risk to investors. Accordingly, even if the firm is able to overcome the obligation to fund a restricted deposit account because of a one-time staffing reduction, FINRA should consider additional obligations or restrictions for the firm, such as heightened supervision obligations. Such obligations, at least in the short term, should ensure the firm has truly reduced its risk level.

Moreover, not every firm will comply with the spirit of the proposed rule. This may result in gamesmanship and evasion of reporting and disclosure requirements to feign compliance while actually falling under a “high-risk” determination. To minimize this, FINRA must be vigilant in reviewing firm regulatory filings to ensure the filings are complete and truthful. In addition, the Clinic believes that more information should be available through BrokerCheck in order to allow investors to fully vet brokers and firms before they invest. FINRA has established that disclosures may be predictive of future misconduct. Therefore, information such as the percentage of brokers at a firm who have disclosures should be included on a firm’s BrokerCheck. A firm’s designation as a “Restricted Firm” or “High-Risk Firm” should also be included. Additionally, information about the average number of disclosures that brokers and

firms have will provide investors with better information by which to assess broker and firm disclosures.

In conclusion, the Clinic believes that the rule is a step forward in regulating those members of the industry who are at the highest risk of harming investors. However, the proposal should be expanded to include further obligations for members found to be "high-risk." Finally, FINRA should consider additional factors pursuant to which a firm may be deemed "high-risk."

Thank you for the opportunity to comment on these important proposals.

Respectfully submitted,

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/s/

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*And Professor of Clinical Legal Educatio*n