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November 23, 2020

By email to: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 20-33: FINRA Qualification Examinations

Dear Ms. Mitchell:

I am writing on behalf of the North American Securities Administrators Association, Inc. ("NASAA")[1] in response to Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 20-33: *FINRA Qualification Examinations* (the "Proposal").[2] NASAA generally supports the changes included in the Proposal. State securities regulators also have a material interest in information regarding violations, disciplinary actions, and eligibility determinations under the applicable rules and procedures, and NASAA encourages FINRA to clarify whether and when such information must be disclosed on the Uniform Application for Securities Industry Registration or Transfer ("Form U4") and the Uniform Termination Notice for Securities Industry Registration ("Form U5").

I. NASAA generally supports FINRA's efforts to protect the fairness, integrity, and utility of FINRA's qualification examinations.

Qualification examinations are an important part of the regulatory gatekeeping function in that they help regulators ensure that individuals have at least a minimum level of competence, understanding, and expertise before they are entrusted with customers' financial futures. As a general matter, the Proposal would enhance FINRA's ability to ensure the fairness, integrity, and utility of its qualification examinations by closing regulatory gaps and providing for timely adjudication of important issues.

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] The Proposal is available at https://www.finra.org/rules-guidance/notices/20-33#notice.

Currently, FINRA may take action under Rule 2010 against an associated person of a member firm who has violated FINRA's Qualification Examinations Rules of Conduct ("Rules of Conduct"). FINRA cannot, however, take similar action against a person who is not yet associated with a FINRA member firm. The Proposal appropriately recognizes that FINRA has a meaningful regulatory interest in being able to act against an individual who violates *any* of the Rules of Conduct, even those who are not currently associated with a FINRA member firm. Accordingly, the Proposal would ensure that the Rules of Conduct and FINRA Rules 1210.05 and 2010 apply equally to both associated and non-associated persons, regardless of the examination that the individual is taking. This is a positive change that closes a significant regulatory gap.

The Proposal would also amend FINRA Rule 9522 to permit FINRA to impose conditions on the sponsoring member or would-be associated person, including heightened supervision, if FINRA approves the association. Conditions on an association can be a potent investor protection tool and many of NASAA's members regularly use them where the circumstances warrant. NASAA agrees with the balanced approach in the Proposal and we strongly encourage FINRA to use this tool to its full potential by imposing meaningful conditions that assure investor protection.

II. Information regarding violations, disciplinary actions, and eligibility determinations under the applicable rules and procedures must be readily available to state securities regulators.

In addition to complying with FINRA's qualification requirements, FINRA associated persons must generally become registered with state securities regulators as broker-dealer agents in each state in which they conduct securities business.[3] Just as FINRA has a regulatory interest in ensuring high ethical and professional standards among its members, so too do state securities regulators have a strong regulatory interest in maintaining similarly high standards among their registrants.[4] Information about disciplinary actions for violating the Rules of Conduct, eligibility proceedings (regardless whether they are initiated through an application on Form MC-400 or a less formal request for relief),[5] and any conditions imposed on the sponsoring member or the person who has failed to meet the Rule 1210.05 qualification requirements would likely be highly relevant to state securities regulators in making registration determinations. It is not clear from the Proposal whether this information would be provided to state regulators by FINRA or required to be disclosed on Forms U4 and U5.[6]

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[3] *See*, *e.g.*, Uniform Securities Act of 2002, §§ 102, 402, *available at* https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=af36852d-457e-db56-3fc2-b2485cdc47e9&forceDialog=0; Uniform Securities Act of 1956, §§ 201, 401, *available at* https://www.nasaa.org/wp-content/uploads/2011/08/UniformSecuritesAct1956withcomments.pdf.

[4] *See*, *e.g.*, Uniform Securities Act of 2002, § 412(d)(13); Uniform Securities Act of 1956, §§ 102(a)(4), 204(a)(2)(G).

[5] *See* Proposal at section entitled "Proposed Amendments to the Eligibility Proceedings Rules"; Proposal at Attachment A, proposed amended Rule 9522(b), (e).

[6] *See* Proposal, n.9.

Ready access to this information is also important because of the potential overlap with state regulation and registration of investment advisers and investment adviser representatives (for the purpose of this comment letter, collectively "investment advisers"). State securities regulators have an equally strong regulatory interest in maintaining the ethical standards among these registrants. If an individual is unable or ineligible to meet FINRA's qualification requirements, there are serious questions about whether that person should be permitted to exercise such significant responsibility over someone else's financial future.

In many states, individuals may qualify as investment advisers by passing NASAA's Series 65 examination, which does not need to be accompanied by any FINRA examinations or licenses.[7] Since the Proposal does not apply to NASAA's examinations, an individual who is prohibited from taking FINRA examinations would not be prohibited by FINRA rules from sitting for the Series 65 and seeking investment adviser registration. Any such prohibition would be material to a state's investment adviser registration or licensing decision and may very well be sufficient grounds on which to deny an application or otherwise take disciplinary steps such as suspending or revoking the registration.[8] State securities regulators regularly rely in part on the information disclosed in the Central Registration Depository ("CRD") when reviewing applications for investment adviser registration. Since no FINRA examination is required for registration under these circumstances, it may not be apparent that there is any reason for concern that would prompt a state securities regulator to ask for this information. The goal of investor protection will be best served if this information is readily available to state securities regulators in the CRD.

III. FINRA should clarify when information related to violations of the Rules of Conduct must be disclosed on Forms U4 and U5.

The Proposal states that "[w]hether a finding that a person has failed to comply with the Rules of Conduct would be publicly available would be based on existing processes, including [Form U4] and Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information)."[9] However, it is not clear from this statement when information would be required to be disclosed on Form U4. The Proposal also does not address whether information would be required to be disclosed on Form U5 or when action by FINRA against a person for violating the Rules of Conduct would result in a Regulatory Action DRP on Form U6. We strongly encourage FINRA to clarify whether this information will be deemed responsive to Form U4, Item 14E and Form U5, Item 7D. This would help alleviate some of NASAA's concerns expressed in this letter, as well as provide FINRA's members and associated persons with clear guidance.

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[7] *See* NASAA Model Rule 204(b)(6)-1 (adopted Sep. 3, 1987), *available at* https://www.nasaa.org/wp-content/uploads/2011/07/23-IA204b61ExamReqadopt9387.pdf. Individuals can also qualify by passing NASAA's Series 66 examination in conjunction with FINRA's Series 7.

[8] Although FINRA could impose conditions on a sponsoring member or associated person under the Proposal, conditions imposed by FINRA (or FINRA's decision to approve an association without conditions) are no substitute for state securities regulators' discretion in regulating the investment advisory business in their own states.

[9] Proposal, n.9.

IV. Conclusion

NASAA appreciates the opportunity to comment on the Proposal and encourages FINRA to make the changes and clarifications specified above. If you have any questions or would like additional information, please do not hesitate to contact NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Lisa Hopkins
NASAA President
Senior Deputy Securities Commissioner,
West Virginia Securities Commission