

Attachment A

Attachment A shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.¹

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4111. Restricted Firm Obligations

(a) General

A member designated as a Restricted Firm shall be required, except as provided in paragraphs (e) and (f), to establish a Restricted Deposit Account and maintain in that account deposits of cash or qualified securities with an aggregate value that is not less than the member's Restricted Deposit Requirement, and shall be subject to such conditions or restrictions on the member's operations as determined by the Department to be necessary or appropriate for the protection of investors and in the public interest.

(b) Annual Calculation by FINRA of Preliminary Criteria for Identification

For each member, the Department will compute annually (on a calendar-year basis) the Preliminary Identification Metrics to determine if the member meets the Preliminary Criteria for Identification.

(c) Initial Department Evaluation and One-Time Staff Reduction

(1) Initial Department Evaluation

If the member is deemed to meet the Preliminary Criteria for Identification, the Department shall conduct an internal evaluation to determine whether (A) the member does not warrant further review under this Rule because

¹ FINRA is proposing that current FINRA Rule 9559 be renumbered to Rule 9560. Additional rule amendments would be needed to conform to the renumbered rule.

the Department has information to conclude that the computation of the member's Preliminary Identification Metrics included disclosure events (and other conditions) that should not have been included because they are not consistent with the purpose of the Preliminary Criteria for Identification and are not reflective of a firm posing a high degree of risk. The Department shall also consider whether the member has addressed the concerns signaled by the disclosure events or conditions or altered its business operations such that the Preliminary Criteria for Identification calculation no longer reflects the member's current risk profile, or (B) except as provided in paragraph (c)(2), the member should proceed to a Consultation.

(2) One-Time Staff Reduction

If the Department determines that the member meets the Preliminary Criteria for Identification and such member has met such criteria for the first time, such member may reduce its staffing levels to no longer meet the Preliminary Criteria for Identification within 30 business days after being informed by the Department. The member shall provide evidence of the staff reduction to the Department identifying the terminated individuals. Once the member has reduced staffing levels to no longer meet the Preliminary Criteria for Identification, it shall

not rehire in any capacity a person terminated to accomplish the staff reduction for a period of one year.

(3) Close-Out Review

If the Department determines that the member no longer warrants further review in accordance with paragraph (c)(1)(A) or (c)(2), the Department shall close out the review of the member for such year.

(d) Consultation

(1) General

If the Department determines that the member meets the Preliminary Criteria for Identification and should proceed to a Consultation, the Department shall conduct the Consultation to allow the member to demonstrate why it does not meet the Preliminary Criteria for Identification and should not be designated as a Restricted Firm. If the member is designated as a Restricted Firm, the Department may require it to maintain the Restricted Deposit Requirement or be subject to such conditions or restrictions as the Department in its discretion shall deem necessary or appropriate for the protection of investors or in the public interest, or both. The member bears the burden of demonstrating that it should not be designated as a Restricted Firm and should not be required to maintain the maximum Restricted Deposit Requirement.

(A) A member may overcome the presumption that it should be designated as a Restricted Firm by clearly demonstrating that the Department's calculation that the member meets the Preliminary Criteria for Identification included events in the Disclosure Event and Expelled Firm Association Categories that should not have been included because

for example, they are duplicative, involving the same customer and the same matter, or are not sales practice related; and

(B) A member may overcome the presumption that it should be subject to the maximum Restricted Deposit Requirement by clearly demonstrating to the Department that the member would face significant undue financial hardship if it were required to maintain the maximum Restricted Deposit Requirement and that a lesser deposit requirement would satisfy the objectives of this Rule and be consistent with the protection of investors and the public interest; or that conditions and restrictions on the operations and activities of the member and its associated persons would address the concerns indicated by the Preliminary Criteria for Identification and protect investors and the public interest.

(2) Scheduling Consultation

The Department shall provide a written letter to each member it determines should proceed to a Consultation of the date, time and place of the Consultation and shall coordinate with the member to schedule further meetings as necessary.

(3) Consultation Process

In conducting its evaluation of whether a member should be designated as a Restricted Firm and subject to a Restricted Deposit Requirement, the Department shall consider:

(A) information provided by the member during any meetings as part of the Consultation;

(B) relevant information or documents, if any, submitted by the member, in the manner and form prescribed by the Department, as shall be necessary or appropriate for the Department to review the computation of the Preliminary Criteria for Identification;

(C) a plan, if any, submitted by the member, in the manner and form prescribed by the Department, proposing in detail the specific conditions or restrictions that the member seeks to have the Department consider;

(D) such other information or documents as the Department may reasonably request in its discretion from the member related to the evaluation; and

(E) any other information the Department deems necessary or appropriate to evaluate the matter.

(e) Department Decision and Notice

(1) Department Decision

Following the Consultation, but no later than 30 days from the date of the letter provided to the member under paragraph (d)(2), the Department shall render a Department Decision as follows:

(A) If the Department determines that the member has rebutted the presumption set forth in paragraph (d)(1)(A) that it should be designated as a Restricted Firm, the Department's decision shall state that the firm shall not be designated as a Restricted Firm.

(B) If the Department determines that the member has failed to rebut the presumption set forth in paragraphs (d)(1)(A) and (d)(1)(B) that

it should be designated as a Restricted Firm that must maintain the maximum Restricted Deposit Requirement, the Department's decision shall designate the member as a Restricted Firm and require the member to: (i) promptly establish a Restricted Deposit Account and deposit and maintain in that account the maximum Restricted Deposit Requirement; and (ii) implement and maintain specified conditions or restrictions, as the Department deems necessary or appropriate, on the operations and activities of the member and its associated persons to address the concerns indicated by the Preliminary Criteria for Identification and protect investors and the public interest.

(C) If the Department determines that the member has failed to rebut the presumption in paragraph (d)(1)(A) that it should be designated as a Restricted Firm but that it has rebutted the presumption in paragraph (d)(1)(B) that it must maintain the maximum Restricted Deposit Requirement, the Department shall designate the member as a Restricted Firm and shall: (i) impose no Restricted Deposit Requirement on the member or require the member to promptly establish a Restricted Deposit Account and deposit and maintain in that account a Restricted Deposit Requirement in such dollar amount less than the maximum Restricted Deposit Requirement as the Department deems necessary or appropriate; and (ii) require the member to implement and maintain specified conditions or restrictions, as the Department deems necessary or appropriate, on the operations and activities of the member and its

associated persons to address the concerns indicated by the Preliminary Criteria for Identification and protect investors and the public interest.

(2) Notice of Department Decision, No Stays

No later than 30 days following the letter provided to the member under paragraph (d)(2), the Department shall issue a notice of the Department's decision pursuant to Rule 9559 that states the obligations to be imposed on the member, if any, under this Rule 4111 and the ability of the member under Rule 9559 to request a hearing with the Office of Hearing Officers. A timely request for a hearing shall not stay the effectiveness of the notice issued under Rule 9559, except that for a notice under Rule 9559(a) a member obligated to maintain a Restricted Deposit Requirement shall be required to maintain in a Restricted Deposit Account the lesser of 50% of its Restricted Deposit Requirement or 25% of its average excess net capital during the prior calendar year, until the Office of Hearing Officers or the NAC issues a written decision under Rule 9560; provided, however, that a member that has been re-designated as a Restricted Firm as set forth in paragraph (f)(2) and is already subject to a previously imposed Restricted Deposit Requirement shall be required to maintain the full amount of its Restricted Deposit Requirement until the Office of Hearing Officers or NAC issues a written decision under Rule 9560.

(f) Continuation or Termination of Restricted Firm Obligations

(1) Currently Designated Restricted Firms

A member or Former Member that is currently designated as a Restricted Firm subject to the requirements of this Rule shall not be permitted to withdraw all or any portion of its Restricted Deposit Requirement, or seek to terminate or

modify any deposit requirement, conditions, or restrictions that have been imposed pursuant to this Rule, without the prior written consent of the Department.

(2) Re-Designation as a Restricted Firm

Where a member has been designated as a Restricted Firm in one year and is determined to meet the Preliminary Criteria for Identification the following year in accordance with paragraph (b), the firm shall be re-designated as a Restricted Firm, and the obligations previously imposed on the member in accordance with this Rule shall remain effective and unchanged, unless either the member or the Department requests a Consultation in writing within 30 days of the date of the letter provided to the member under paragraph (d)(2), in which case the obligations previously imposed shall remain effective and unchanged unless and until the Department modifies or terminates them after the Consultation. If a Consultation is conducted, there shall be a presumption that the Restricted Deposit Requirement and conditions or restrictions, if any, previously imposed on the member shall remain effective and unchanged absent a showing by the party seeking changes that the previously imposed obligations are no longer necessary or appropriate for the protection of investors or in the public interest. If a Consultation is not timely requested, the member shall be subject to paragraph (f)(1).

(3) Previously Designated Restricted Firms

A member or Former Member that is a Restricted Firm in one year, but does not meet the Preliminary Criteria for Identification or is not designated as a Restricted Firm the following year(s), shall no longer be subject to any deposit

requirement, conditions, or restrictions previously imposed on it under this Rule; provided, however, the member or Former Member shall not be permitted to withdraw any portion of its Restricted Deposit Requirement without submitting an application and obtaining the prior written consent of the Department. Such application shall:

(A) be made in such form and manner as FINRA may prescribe;

(B) be accompanied by a copy of a current account statement for the member or Former Member's Restricted Deposit Account;

(C) include a certification by the member's or Former Member's chief executive officer (or equivalent officer) stating the member's or Former Member's Restricted Deposit Requirement; the value of the cash or qualified securities on deposit in the member's or Former Member's Restricted Deposit Account; the value of cash or qualified securities on deposit in the member's or Former Member's Restricted Deposit Account that the member or Former Member is seeking the Department's consent to withdraw; and

(D) include evidence that there are no "covered pending arbitration claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding against the member or Former Member, or if there are any "covered pending arbitration claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding provide a detailed description of such.

After such review and investigation as it considers necessary or appropriate, the Department shall determine whether to authorize a withdrawal, in

part or whole, of cash or qualified securities from the member's or Former Member's Restricted Deposit Account. There shall be a presumption that the Department shall require the member or Former Member to continue to maintain its Restricted Deposit Requirement if the member or Former Member has any "covered pending arbitration claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding. Within 30 days from the date the application is received by the Department, the Department shall issue a notice of the Department's decision pursuant to Rule 9559.

(g) Books and Records

Each member shall maintain records evidencing the member's compliance with this Rule and any Restricted Deposit Requirement or conditions or restrictions imposed in accordance with this Rule, including without limitation, records relating to the calculation of the Preliminary Criteria for Identification, Consultation, the Restricted Deposit Account, conditions or restrictions imposed, and agreements with bank(s) or clearing firm(s), for a period of six years from the date the member is no longer subject to the requirements of this Rule. In addition, a firm that is subject to a Restricted Deposit Requirement shall provide to the Department, upon its request, records, agreements and account statements that demonstrate the firm's compliance with the Restricted Deposit Requirement.

(h) Notice of Failure to Comply

FINRA may issue a notice pursuant to Rule 9559(b) directing a member that is not in compliance with the Restricted Deposit Requirement or the conditions or restrictions imposed by this Rule to suspend all or a portion of its business.

(i) Definitions

For purposes of this Rule, the following terms shall have the following meanings:

(1) The term “Consultation” means one or more meetings or consultations between the Department and a member that meets the Preliminary Criteria for Identification.

(2) The term “Covered Pending Arbitration Claim,”² means an investment-related, consumer initiated claim filed against the member or its Associated Persons that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the member’s excess net capital. For purposes of this definition, the claim amount includes claimed compensatory loss amounts only, not requests for pain and suffering, punitive damages or attorney’s fees.

(3) The term “Department” means FINRA’s Department of Member Supervision.

(4) The term “Disclosure Event and Expelled Firm Association Categories” means the following categories of disclosure events and other information:

(A) “Registered Person Adjudicated Events” means any one of the following events that are reportable on the registered person’s Uniform Registration Forms:

² See Regulatory Notice 18-06 (April 2018). The term “covered pending arbitration claim” is proposed in Regulatory Notice 18-06. FINRA anticipates that the term would be amended in proposed Rule 4111 to conform to any final definition adopted under the proposal in Regulatory Notice 18-06.

(i) a final investment-related, consumer-initiated customer arbitration award or civil judgment against the registered person in which the registered person was a named party or was a “subject of” the customer arbitration award or civil judgment;

(ii) a final investment-related, consumer-initiated customer arbitration settlement, civil litigation settlement or a settlement prior to a customer arbitration or civil litigation for a dollar amount at or above \$15,000 in which the registered person was a named party or was a “subject of” the customer arbitration settlement, civil judgment settlement or a settlement prior to a customer arbitration or civil litigation;

(iii) a final investment-related civil judicial matter that resulted in a finding, sanction or order;

(iv) a final regulatory action that resulted in a finding, sanction or order, and was brought by the Commission or Commodity Futures Trading Commission (CFTC), other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or

(v) a criminal matter in which the registered person was convicted of or pled guilty or nolo contendere (no contest) in a domestic, foreign, or military court to any felony or any reportable misdemeanor.

(B) “Registered Person Pending Events” means any one of the following events associated with the registered person that are reportable on the registered person’s Uniform Registration Forms:

(i) a pending investment-related civil judicial matter;

(ii) a pending investigation by a regulatory authority;

(iii) a pending regulatory action that was brought by the Commission or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or

(iv) a pending criminal charge associated with any felony or any reportable misdemeanor.

(C) “Registered Person Termination and Internal Review Events” means any one of the following events associated with the registered person that are reportable on the registered person’s Uniform Registration Forms:

(i) a termination in which the registered person voluntarily resigned, was discharged or was permitted to resign after allegations; or

(ii) a pending or closed internal review by the member.

(D) “Member Firm Adjudicated Events” means any of the following events that are reportable on the member’s Uniform Registration Forms, or are based on customer arbitrations filed with FINRA’s dispute resolution forum:

(i) a final investment-related, consumer-initiated customer arbitration award in which the member was a named party;

(ii) a final investment-related civil judicial matter that resulted in a finding, sanction or order;

(iii) a final regulatory action that resulted in a finding, sanction or order, and was brought by the Commission or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or

(iv) a criminal matter in which the member was convicted of or pled guilty or nolo contendere (no contest) in a domestic, foreign, or military court to any felony or any reportable misdemeanor.

(E) “Member Firm Pending Events” means any one of the following events that are reportable on the member’s Uniform Registration Forms:

(i) a pending investment-related civil judicial matter;

(ii) a pending investigation by a regulatory authority;

(iii) a pending regulatory action that was brought by the Commission or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or

(iv) a pending criminal charge associated with any felony or any reportable misdemeanor.

(F) “Registered Persons Associated with Previously Expelled Firms” means any registered person registered for one or more days within the year prior to the Evaluation Date with the member, and who was associated with one or more previously expelled firms (at any time in his/her career).

(5) The term “Evaluation Date” means the date, each calendar year, as of which the Department calculates the Preliminary Identification Metrics to determine if the member meets the Preliminary Criteria for Identification.

(6) The term “Evaluation Period” means the prior five years from the Evaluation Date, provided that for the Registered Person Pending Events and Member Firm Pending Events categories and pending internal reviews in the Registered Person Termination and Internal Review Events category, it would correspond to the Evaluation Date (and include all events that are pending as of the Evaluation Date).

(7) The term “Former Member” means an entity that has withdrawn or resigned its FINRA membership, or that has had its membership cancelled or revoked.

(8) The term “qualified security” has the meaning given it in SEA Rule 15c3-3(a)(6).

(9) The term “Preliminary Criteria for Identification” means meeting the following conditions:

(A) Two or more of the member’s Preliminary Identification Metrics are equal to or more than the corresponding Preliminary

Identification Metrics Thresholds, and at least one of these metrics is amongst the following metrics:

- (i) Registered Person Adjudicated Event Metric;
- (ii) Member Firm Adjudicated Event Metric; and
- (iii) Expelled Firm Association Metric; and

(B) The member has two or more Registered Person and Member Firm Events during the Evaluation Period.

(10) The term “Preliminary Identification Metrics” means the following six metrics that are based on the number of disclosure events (defined above) per Registered Persons In-Scope or percent of Registered Persons In-Scope associated with previously expelled firms:

(A) “Registered Person Adjudicated Event Metric” would be computed as the sum of Registered Person Adjudicated Events that reached a resolution during the Evaluation Period, across all Registered Persons In-Scope and divided by the number of Registered Persons In-Scope.

(B) “Registered Person Pending Event Metric” would be computed as the sum of Registered Person Pending Events as of the Evaluation Date, across all Registered Persons In-Scope and divided by the number of Registered Persons In-Scope.

(C) “Registered Person Termination and Internal Review Event Metric” would be computed as the sum of Registered Person Termination and Internal Review Events that reached a resolution during the Evaluation Period and pending internal reviews by the member as of the

Evaluation Date, across all Registered Persons In-Scope and divided by the number of Registered Persons In-Scope.

(D) “Member Firm Adjudicated Event Metric” would be computed as the sum of Member Firm Adjudicated Events that reached a resolution during the Evaluation Period, across all Registered Persons In-Scope and divided by the number of Registered Persons In-Scope.

(E) “Member Firm Pending Event Metric” would be computed as the sum of Member Firm Pending Events as of the Evaluation Date, across all Registered Persons In-Scope and divided by the number of Registered Persons In-Scope.

(F) “Expelled Firm Association Metric” would be computed as the sum of Registered Persons Associated with Previously Expelled Firms, divided by the number of Registered Persons In-Scope.

(11) The term “Preliminary Identification Metrics Thresholds” means the following thresholds corresponding to each of the six Preliminary Identification Metrics.

Preliminary Identification Metrics Thresholds							
Firm Size Category	Number of Registered Persons In-Scope in Firm Size Category	Thresholds for Registered Person Event Metrics:			Thresholds for Member Firm Event Metrics:		Threshold for Expelled Firm Association Metric:
		Registered Person Adjudicated Event Metric	Registered Person Pending Event Metric	Registered Person Termination and Internal Review Event Metric	Member Firm Adjudicated Event Metric	Member Firm Pending Event Metric	Expelled Firm Association Metric
		(1)	(2)	(3)	(4)	(5)	(6)
1	1-4	0.50	0.20	0.10	0.75	0.25	0.75
2	5-9	0.30	0.20	0.10	0.30	0.10	0.50
3	10-19	0.20	0.10	0.10	0.30	0.05	0.50
4	20-50	0.20	0.10	0.10	0.20	0.02	0.50
5	51-150	0.20	0.05	0.10	0.15	0.01	0.25
6	151-499	0.15	0.05	0.10	0.10	0.01	0.10
7	500+	0.10	0.05	0.10	0.05	0.01	0.05

(12) The term “Registered Person and Member Firm Events” means the sum of the following categories of defined events during the Evaluation Period:

(A) Registered Person Adjudicated Events;

(B) Registered Person Pending Events;

(C) Registered Person Termination and Internal Review Events;

(D) Member Firm Adjudicated Events; and

(E) Member Firm Pending Events.

(13) The term “Registered Persons In-Scope” means all persons registered with the firm for one or more days within the one year prior to the Evaluation Date.

(14) The term “Restricted Deposit Account” means an account in the name of the member:

(A) at a bank (as defined in Section 3(a)(6) of the Exchange Act) or the member’s clearing firm;

(B) subject to an agreement in which the bank or the member’s clearing firm, as applicable, agrees:

(i) not to permit withdrawals (other than withdrawals of interest or the withdrawal of qualified securities or cash after and on the same day as the deposit of cash or qualified securities of equal value) from the Restricted Deposit Account without the prior written consent of FINRA;

(ii) to keep the account separate from any other accounts maintained by the member with the bank or clearing firm;

(iii) that the cash or securities on deposit in the account will at no time be used directly or indirectly as security for a loan to the member by the bank or clearing firm and will not be subject to any set-off, right, charge, security interest, lien, or claim of any kind in favor of the bank, clearing firm or any person claiming through the bank or clearing firm;

(iv) that if the member becomes a Former Member, the Restricted Deposit Requirement in the Restricted Deposit Account shall be maintained and the bank or clearing firm will not permit withdrawals from the Restricted Deposit Account without the prior written consent of FINRA as set forth in paragraph (f)(3); and

(v) that FINRA is a third-party beneficiary to such agreement and that such agreement may not be amended without the prior written consent of FINRA; and

(C) not subject to any right, charge, security interest, lien or claim of any kind granted by the member.

(15) The term “Restricted Deposit Requirement” means the deposit to be maintained by the member as follows:

(A) the specific maximum Restricted Deposit Requirement for a member, determined by the Department taking into consideration the nature of the firm’s operations and activities, annual revenues, commissions, net capital requirements, the number of offices and registered persons, the nature of the disclosure events counted in the numeric thresholds, the amount of any “covered pending arbitration

claims,” unpaid arbitration awards or unpaid settlements related to arbitrations, and concerns raised during FINRA exams. Based on a review of these factors, the Department would determine a maximum Restricted Deposit Requirement for the member that would be consistent with the objectives of this Rule, but would not significantly undermine the continued financial stability and operational capability of the firm as an ongoing enterprise over the next 12 months; or

(B) the amount, adjusted after the Consultation, determined by the Department; and

(C) with respect to a Former Member, the Restricted Deposit Requirement last calculated pursuant to paragraph (i)(15)(A) or (15)(B) when the firm was a member.

(16) The term “Restricted Firm” means each member that is designated as such in accordance with paragraphs (e)(1)(B) and (e)(1)(C).

(17) The term “Uniform Registration Forms” means the Forms BD, U4, U5 and U6, as applicable.

••• Supplementary Material: -----

.01 Net Capital Treatment of the Deposits in the Restricted Deposit Account

Because of the restrictions on withdrawals from a Restricted Deposit Account, deposits in such an account cannot be readily converted into cash and therefore shall be deducted in determining the member’s net capital under SEA Rule 15c3-1 and Rule 4110.

.02 Compliance with Rule 1017

Nothing in this Rule shall be construed as altering in any manner a member’s obligations under Rule 1017.

9559. Procedures for Regulating Activities Under Rule 4111

(a) Notices Under Rule 4111

(1) Notice of Requirements or Restrictions

FINRA's Department of Member Supervision ("Department") shall issue a notice of its determination under Rule 4111 that a firm is a Restricted Firm and the requirements, conditions or restrictions to which the Restricted Firm is subject (hereinafter, collectively referred to as the "Rule 4111 Requirements").

(2) Service of Notice

FINRA staff shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email

address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(3) Contents of Notice

A notice issued under this Rule shall include the Department's determinations under Rule 4111 and state the specific grounds and include the factual basis for the FINRA action. The notice shall state when the FINRA action will take effect. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9560. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity the basis for eliminating any Rule 4111 Requirements. In addition, the notice shall explain that, pursuant to Rule 9560(n), a Hearing Officer may approve or withdraw any and all of the Rule 4111 Requirements, or remand the matter to the Department that issued the notice for further consideration of

specified matters, but may not modify any of the Rule 4111 Requirements imposed by the notice or impose any other obligations or restrictions available under Rule 4111.

(4) Effectiveness of the Rule 4111 Requirements

The Rule 4111 Requirements imposed by a notice issued and served under paragraph (a) of this Rule are immediately effective; provided, however, that when a firm requests review of a Department determination under Rule 4111 that imposes a deposit requirement on the firm for the first time, the firm shall be required to deposit only 50% of its restricted deposit requirement or 25% of its average excess net capital over the prior year, whichever is less, while the hearing is pending. The Rule 4111 Requirements, and the partial deposit requirement required by Rule 4111 and this paragraph, shall remain in effect while the hearing is pending.

(5) Request for Hearing

A member served with a notice under paragraph (a) of this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9560. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity the basis for eliminating any Rule 4111 Requirements.

(6) Failure to Request Hearing

If a member does not timely request a hearing, the notice under paragraph (a) of this Rule shall constitute final FINRA action.

(b) Notice for Failure to Comply with the Rule 4111 Requirements

(1) Notice of Suspension or Cancellation

If a member fails to comply with any Rule 4111 Requirements imposed under this Rule, the Department, after receiving authorization from FINRA's Chief Executive Officer or such other executive officer as the Chief Executive Officer may designate, may issue a suspension or cancellation notice to such member stating that the failure to comply with the Rule 4111 Requirements within seven days of service of the notice will result in a suspension or cancellation of membership.

(2) Service of Notice

FINRA staff shall serve the member subject to a notice issued under paragraph (b) in accordance with the service provisions in paragraph (a)(2).

(3) Contents of Notice

The notice shall explicitly identify the Rule 4111 Requirements with which the firm is alleged to have not complied and shall contain a statement of facts specifying the alleged failure. The notice shall state when the suspension will take effect and explain what the respondent must do to avoid such suspension. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9560. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the FINRA action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9560(n), a Hearing Officer may

approve or withdraw the suspension or cancellation of membership, and may impose any other fitting sanction.

(4) Effective Date of Suspension or Cancellation

The suspension or cancellation referenced in a notice issued and served under paragraphs (b)(1) and (b)(2) shall become effective seven days after service of the notice, unless stayed by a request for hearing pursuant to Rule 9560.

(5) Request for a Hearing

A member served with a notice under paragraphs (b)(1) and (b)(2) may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9560. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (b)(4) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the FINRA action.

(6) Failure to Request Hearing

If a member does not timely request a hearing, the suspension or cancellation specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final FINRA action.

(7) Request for Termination of the Suspension

A member subject to a suspension imposed after the process described in paragraphs (b)(1) through (6) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Department. The head of the Department may grant relief for good cause shown.

••• Supplementary Material: -----

.01 Application to Former Members Under Rule 4111

For purposes of this Rule, the term member also shall include a “Former Member” as defined in Rule 4111(i) as applicable.

* * * * *

[9559]9560. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to FINRA’s jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 9556(h). For purposes of this Rule, such members or persons shall be referred to as respondents.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through [9558]9559, unless otherwise specified.

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9556 and 9559(b), except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof under

Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule [9559]9560(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other executive officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule [9559]9560(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(4) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9559(a).

(d) Appointment and Authority of Hearing Officer and[or] Hearing Panel

(1) For proceedings initiated under Rules 9553, 9554, [and] 9556(h) and 9559, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556 (except Rule 9556(h)), 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing

Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9551, 9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the FINRA Financial Responsibility Committee.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has

discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where FINRA's Chief Executive Officer (or such other executive officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, obligation or suspension specified in the notice, or the partial deposit requirement specified in Rule 9559(a)(4), shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement [and/]or restriction specified in the notice shall not be further stayed.

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rules 9556(h).

(3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)), [and] 9558 or 9559(b) files a written request for a hearing with the Office of Hearing Officers.

(4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(5) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rule 9559(a) files a written request for a hearing with the Office of Hearing Officers.

([5]6) The timelines established by paragraphs (f)(1) through (f)(5[4]) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);

(3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 (except Rule 9556(h)), [and] 9558 or 9559(b);
and

(4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555 or 9559(a).

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)), [and] 9558 or 9559(b), and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555 or 9559(a), FINRA staff shall provide to the respondent who

requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile, email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B), (C) or (b)(2). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556, [and] 9558 or 9559(b), and not less than seven days before the hearing in an action brought under Rules 9551 through 9555 or 9559(a), the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

(i) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

(j) Additional Information

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

(k) Record of Hearing

Rule 9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 9267 shall govern the record of the proceeding.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases:

(1) The notice issued under the Rule 9550 Series shall be deemed to be final FINRA action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule [9559]9560(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not

called for review pursuant to Rule [9559]9560(q), the default decision shall become the final FINRA action.

(n) Sanctions, Requirements, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h), [or] Rule 9557 or Rule 9559, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction.

(3) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements [and/]or restrictions imposed by the notice. If the Hearing Panel approves the requirements [and/]or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements [and/]or restrictions pursuant to Rule 9557(g)(2).

(4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

(5) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h), or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(6) In any action brought under Rule 9559(a), the Hearing Officer may approve or withdraw any and all of the Rule 4111 Requirements, or remand the matter to the Department that issued the notice for further consideration of specified matters, but may not modify any of the Rule 4111 Requirements imposed by the notice or impose any other requirements, obligations or restrictions available under Rule 4111. In any action brought under Rule 9559(b), the Hearing Officer may approve or withdraw the suspension or cancellation of membership, and may impose any other fitting sanction.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553, [and] 9554 and 9559

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final FINRA action. For decisions issued under Rules 9551 through 9556, [and] 9558 or 9559, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each FINRA member with which the respondent is associated.

(6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

- (1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;
- (2) the specific statutory or rule provision alleged to have been violated or providing the authority for the FINRA action;
- (3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;
- (4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;
- (5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction, requirement, obligation, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, obligation, restriction or limitation shall become effective, if they are not already effective.

(q) Call for Review by the National Adjudicatory Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the National Adjudicatory Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers. For proceedings initiated under Rule 9557, the National

Adjudicatory Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the National Adjudicatory Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the National Adjudicatory Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the National Adjudicatory Council shall serve a final written decision on the parties via overnight courier or facsimile. The National Adjudicatory Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The National Adjudicatory Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the National Adjudicatory Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) The National Adjudicatory Council's written decision shall constitute final FINRA action.

(5) The National Adjudicatory Council shall promptly serve the decision on the Parties and provide a copy of the decision to each FINRA member with which the respondent is associated.

(6) The timelines established by paragraphs (q)(1) through (5) confer no substantive rights on the parties.

(r) Application to SEC for Review

The right to have any action pursuant to this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review by the SEC shall not stay the effectiveness of final FINRA action, unless the SEC otherwise orders.

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