



August 6, 2019

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, D.C. 20006-1506

Re: Proposed New Rule 4111 (Restricted Firm Obligations) Imposing Additional Obligations on Firms with a Significant History of Misconduct, Regulatory Notice 19-17

Dear Ms. Mitchell:

The American Securities Association (ASA)¹ appreciates the opportunity to comment on the proposed rule 4111 (Proposal) released for comment by the Financial Industry Regulatory Authority (FINRA). The Proposal seeks to address a very important issue in our industry, and we applaud FINRA and its leadership for bringing these issues into the public debate. While we strongly support FINRA promoting investor protection and market integrity, certain aspects of the Proposal seem contrary to FINRA's mission as a self-regulatory organization (SRO), they do not go far enough to remove the most egregious actors from our industry, and they could ultimately harm the Main Street investors and retirement savers it seeks to protect.

As an SRO, FINRA's mission is to "safeguard the investing public against fraud and bad practices." This obligates FINRA to use every tool at its disposal to remove brokers from our industry who repeatedly fail to comply with regulations and engage in egregious acts that harm the customers of brokerage firms. We fully support FINRA revoking the licenses of brokers and expelling firms that employ these types of business models.

As FINRA states in the Proposal, there continues to be an ongoing problem within the brokerage industry of certain firms hiring recidivist brokers who are known to be bad actors and then failing to properly supervise them. The Proposal notes that "such firms generally do not carry out their supervisory obligations to ensure compliance with applicable securities laws regulations and FINRA rules, and they often act in ways that harm their customers and erode trust in the brokerage industry."²

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

² Proposal at 3

If FINRA determines that a specific firm does not carry out its supervisory obligations and acts in ways that harms their customers, then FINRA has an obligation to pursue the expulsion of that firm from the brokerage industry. Recidivist brokers should not be allowed to move from one firm to another with impunity, and firms that have a demonstrated track record of hiring them and failing to properly oversee them have no place in our industry.

Regrettably, instead of clarifying what criteria will necessitate penalty or expulsion, the Proposal creates a byzantine process that would marginally increase the financial obligations of bad actor firms and allow these firms to remain in practice and continue their abuse of Main Street investors. This outcome is unacceptable and contrary to FINRA's mission. FINRA is not an insurer responsible for pricing certain 'risks' in the market; it is an SRO that has an obligation to penalize and, if necessary, revoke the licenses of bad actors whether they are held by firms or by brokers. If FINRA believes it lacks the authority or the tools necessary to stop the most egregious abuses within the brokerage industry, then it should work with the Securities and Exchange Commission (SEC), Congress and the industry to correct the problem.

We also draw a parallel between provisions in the Proposal and a concept release by FINRA discussing unpaid arbitration awards. As the ASA noted with respect to this proposal – which would have affected only 2% of all arbitration awards granted – that the net result would be that innocent investors and brokerage firms will ultimately pay for the actions of bad actors who should be barred from operating in our industry in the first place.

We would also suggest that FINRA apply a capital charge in lieu of the proposed collection of funds. We are concerned about the precedent a rulemaking which requires firms to place funds into an account controlled by regulator will set and how such a precedent could be misused in the future.

We also strongly believe that there are certain acts, such as theft of customer funds, that are so egregious and reprehensible that they should be punished with an immediate lifetime ban from the industry. There is no place for this in our industry and we strongly encourage FINRA to move in this direction.

While we appreciate efforts by FINRA to hold bad actors accountable, we believe the Proposal can do better. We encourage FINRA to instead clarify how it can use its authority to penalize or remove recidivist brokers and those who commit certain violations from the brokerage industry. We welcome the opportunity to engage with FINRA as it moves forward on this initiative.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association