



March 9, 2020

VIA EMAIL TO PUBCOM@FINRA.ORG

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Retrospective Review on the Effectiveness and Efficiency of its Reporting Requirements Rule 4530 (Rule 4530)

Dear Ms. Mitchell,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to the Financial Industry Regulatory Authority (“FINRA”) to provide comments on the retrospective rule review of Rule 4530 (Reporting Requirements), as outlined in Regulatory Notice 20-02, to assess the effectiveness and efficiency of the requirement to report specified events to FINRA. SIFMA supports and appreciates the continued efforts of FINRA to enhance FINRA rules through the retrospective review process.

I. Executive Summary

SIFMA and its members ask that FINRA improve reporting requirements under Rule 4530 by (1) eliminating duplicative reporting requirements, (2) simplifying the manner in which member firms report, (3) clarifying aspects of the requirements, (4) modifying certain reporting requirements and related processes, and (5) modernizing the processes overall.

Moreover, with specific reference to Rule 4530(b), we ask FINRA to strongly consider adopting a more principles based approach to firm’s self-reporting obligations that would more effectively advance its mission of investor protection than the current rigid, rules-based approach.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry, nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry-coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”).

Ms. Jennifer Piorko Mitchell
March 9, 2020

SIFMA and its members believe that these improvements will lead to more efficient processes without impairing the efficacy of Rule 4530.

II. Background

On January 9, 2020, FINRA published Regulatory Notice 20-02 requesting comment on the effectiveness and efficiency of Rule 4530 (Reporting Requirements).² FINRA regularly conducts retrospective reviews to assess the efficacy and efficiency of its rules as currently implemented.

FINRA Rule 4530 requires a member firm to report specified events, quarterly statistical and summary information regarding written customer complaints, and to file copies of specified criminal actions, civil complaints and arbitration claims to FINRA. The reports must be submitted electronically via the Firm Gateway but copies of specified criminal actions, civil complaints and arbitration claims can also be filed via mail or email.

III. Comments

1. FINRA should eliminate duplicative reporting requirements.

SIFMA and its members encourage FINRA to eliminate duplicative requirements under Rule 4530 and across related Form BD, Form U4, and Form U5. We acknowledge prior efforts, such as the proposal to provide a method to designate certain information disclosed in the Form U4 to satisfy corresponding FINRA Rule 4530(a)(1) reporting requirements. FINRA should evaluate and implement additional measures to eliminate duplication.

For example, Rule 4530 and Form BD have unnecessary duplicative reporting requirements. Rule 4530(a)(1)(E) requires disclosures of “any felony; or any misdemeanor that involves the purchase or sale of any security”³ and Form BD at question 11 requires disclosure of “any felony . . . a misdemeanor involving: investments or an investment-related business.”⁴ Rule

² See FINRA, *Regulatory Notice 20-02* (Jan. 9, 2020), <https://www.finra.org/rules-guidance/notices/20-02>.

³ Rule 4530(a) requests disclosure of whether, “(1) the member or an associated person of the member: . . . (E) is indicted, or convicted of, or pleads guilty to . . . any felony; or any misdemeanor that involves the purchase or sale of any security.”

⁴ Form BD 11A requests disclosure of whether, “[i]n the past ten years has the applicant or a control affiliate: (1) been convicted of . . . any felony? (2) been charged with any felony?” and Form BD 11B requests disclosure of whether, “[i]n the past ten years has the applicant or a control affiliate: (1) been convicted of . . . a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? (2) been charged with a misdemeanor specified in 11B(1)?”

Ms. Jennifer Piorko Mitchell
March 9, 2020

4530 and Form BD are filed and maintained through the Central Registration Depository (“CRD”) system, operated by FINRA.

As noted above, Rule 4530(a)(1)(E) requires a member to report whether it or its associated persons are indicted, convicted of, or pled guilty or no contest to a felony. Form U4 also requires members report and disclose felony charges and convictions.⁵ FINRA should eliminate this unnecessary duplicative reporting obligation.

There are additional instances of duplication beyond the above, not captured in this letter; accordingly, we suggest that FINRA perform a comparative review across Rule 4530 and the Forms mentioned to identify and remove such instances. We encourage FINRA to think broadly about ways to better connect data already submitted by member firms to reduce duplicative reporting requirements across Rule 4530 and other requirements. We believe this would also be beneficial to FINRA, because it would simplify and reduce the total amount of duplicative data submitted.

2. FINRA should simplify reporting requirements and related processes under Rule 4530.

SIFMA and its members encourage FINRA to take steps toward simplifying Rule 4530 and its related processes, particularly with regard to Form U5, Rule 4530(d) that captures statistical and summary information about written consumer complaints and Rule 4530(f) that requires firms to file copies of civil and criminal complaints, or other related documents, against the member or an associated person.

Rule 4530(d) requires members to report “statistical and summary information regarding written customer complaints” to FINRA. Firms find that the data transfer tools to comply with 4530(d) are overly complex.⁶ Member firms experience frustration with the complicated user interface from “user/machine” to “authenticate.”⁷ The interface is complex and cumbersome to implement, a challenge experienced by firms of all size.⁸ Additionally, firms have expressed frustration with the lack of consolidation between the various data transfer tools and uploading platforms.⁹ SIFMA and its members ask that FINRA simplify the data transfer tools and create a

⁵ Form U4, Rule 14A.

⁶ FINRA, *Data Transfer Tools*, <https://www.finra.org/filing-reporting/data-transfer-tools> (last visited March 4, 2020).

⁷ FINRA, *fileX User Guide* (April 1, 2019), https://www.finra.org/sites/default/files/fileX_User_Guide.pdf.

⁸ See FINRA, *Filing and Reporting* (May 7, 2018), <https://www.finra.org/filing-reporting/data-transfer-tools/fileX>.

⁹ FINRA, *Firm Gateway*, <https://www.finra.org/filing-reporting/firm-gateway> (last visited March 3, 2020); FINRA, *Data Transfer Tools*, <https://www.finra.org/filing-reporting/data-transfer-tools> (last visited March 4, 2020).

less complicated user interface. We also ask that FINRA begin to consolidate its tools and platforms to reduce the burden on firms to navigate and process multiple systems.

Rule 4530(f) requires members to file copies of criminal indictments, complaints or plea agreements¹⁰ or complaints in securities- or commodities-related or any financial-related insurance private civil litigation or arbitration claim against the member or an associated person.¹¹ Currently, FINRA allows firms to send these filings over email without having to answer the various questions associated with Form U4.¹² FINRA has considered eliminating this email option. If the email option is eliminated, SIFMA and its members believe that firms should be provided with the opportunity to simply upload the relevant documents via the Firm Gateway without answering any additional questions. Alternatively, as discussed before, FINRA should begin to consolidate its tools and platforms and allow firms to upload all relevant reporting requirements to *one*, simple bulk file transfer platform. This will eliminate the issue of submitting filings through several different and complicated platforms.

By simplifying these aspects of reporting, SIFMA and its members believe that FINRA member firms will experience less difficulty meeting their obligations under Rule 4530 without impairing the relevant disclosures. In addition, such simplification will further the goal of providing adequate disclosure to the investing public.

3. FINRA should clarify reporting requirements and related processes under Rule 4530.

SIFMA and its members encourage FINRA to take steps toward clarifying several requirements and related processes under Rule 4530.

A. Batch Reporting Disciplinary Actions.

FINRA allows firms to upload a large volume of filings and disclosure events via file transfer protocol batch submission.¹³ SIFMA and its members encourage FINRA to clarify how to report the information requested by examiners through batch submission accurately. For instance, the template limits the ability to report financial advisor information on firm complaints although this information is requested by examiners. This clarification would help firms to comply with examiner requests and utilize batch submission for voluminous filings.

¹⁰ Qualifying and reportable criminal conduct is found under Rule 4530(a)(1)(E).

¹¹ This includes members are reportable under question 14 on Form U4, per Rule 4530(f)(4).

¹² FINRA, *Rule 4530 Reporting Requirements*, <https://www.finra.org/filing-reporting/rule-4530-reporting-requirements> (last visited Feb. 28, 2020).

¹³ See FINRA, *Rule 4530 Reporting Requirements*, *supra* n. 12.

Ms. Jennifer Piorko Mitchell
March 9, 2020

B. Ambiguous Language or Requirements under Rule 4530.

SIFMA and its members ask FINRA to clarify ambiguous language and better explain the specific requirements under Rule 4530. By providing further clarity, firms will be more able to fulfill their respective reporting requirements under the rule.

Investigating Internal Violations under Rule 4530(b). FINRA explains the threshold for reporting internal conclusions of violative conduct by a member firm in Supplementary Material 4530.01 as follows: FINRA expects a member to report only conduct that has widespread or potential widespread impact to the member, its customers or the markets, or conduct that arises from a material failure of the member's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts.

However, some SIFMA members have received guidance from FINRA staff that a lower standard applies when the violative conduct involves regulatory reporting issues (*e.g.*, Bluesheets, LOPR, OATS) that firms identify in the ordinary course of business. SIFMA and its members ask that FINRA confirm that the above-referenced materiality standard set out in Supplementary Material 4530.01 applies to all violative conduct identified by firms, including regulatory reporting issues.

Use of “financial securities, insurance, commodities or investment-related,” in Rules 4530(a)(1)(a), 4530(a)(1)(G), 4530(b) and 4530(f)(2). SIFMA and its members ask that FINRA clarify and provide guidance on the following language found in Rules 4530(a)(1)(a), 4530(a)(1)(G), 4530(b) and 4530(f)(2): “financial securities, insurance, commodities or investment-related.” In comparable requirements, including Form 7-R used to register with the U.S. Commodity Futures Trading Commission and apply for National Futures Association membership and Form BD, regulators have provided a definition or guidance on how to interpret such language. We recommend that FINRA adopt a definition consistent with the existing definition in Form BD.

Further, FINRA's Form U4 and Form U5 provide guidance on the definition of “investment-related,” but the guidance is limited to those Forms and is not extended to Rule 4530. For example, Question 14I(1) of Form U4 asks whether a registered representative “[has] ever been named as a respondent/defendant in an **investment-related**, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations.” FINRA's 2014 Form U4 Explanation of Terms provides that “**Investment-Related**” “[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to,

Ms. Jennifer Piorko Mitchell
March 9, 2020

acting or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).”¹⁴

In contrast, the phrasing of Rule 4530(a)(1) suggests that “investment-related” has a different meaning than the meaning in the 2014 Explanation of Terms. Instead of defining “investment-related” *to include* securities, insurance, or commodities business as in the Explanation of Terms, Rule 4530(a)(1)(A) lists “investment-related” *alongside* other terms like securities and insurance. Specifically, Rule 4530(a)(1)(A) requires members to report to FINRA after the member knows the member or an associated person: [h]as been found to have violated any **securities-, insurance-, commodities-, financial- or investment-related** laws.”

At a minimum, the distinct formatting of these definitions should be reconciled for consistency. To the extent FINRA intended the definition of “investment-related” to be different in these contexts, FINRA should clarify the reasoning behind the definition or resolve the inconsistency.

Reporting Felonies under Rules 4530(a)(1)(E) and 4530(a)(1)(F). SIFMA and its members ask that FINRA clarify whether it is reasonable to apply the Form U4 Explanation of Terms¹⁵ to Rule 4530 to the interpretation of “felony” under 4530(a)(1)(E) and 4530(a)(1)(F).¹⁶

Additionally, SIFMA and its members ask that FINRA harmonize and clarify its seemingly-inconsistent use of the word “indicted” under 4530(a)(1)(E) and its use of the word “indictment” under 4530(f). Rule 4530(a)(1)(E) requires disclosure when an associated person is “indicted, or convicted of, or pleads guilty to, or pleads no contest to” a criminal offense,¹⁷ whereas 4530(f) requires disclosure of “any indictment, information, or other criminal complaint or plea agreement.” As a result, these two areas of the rule appear to target different criminal procedural postures. We recommend that FINRA harmonize and clarify what is sought, so that firms are not left unsure as to how to interpret “indicted” versus “indictment” in these two contexts.

¹⁴FINRA, *Form U4 Explanation of Terms* (Apr. 2014), <https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf> (emphasis added).

¹⁵ *Id.*

¹⁶ Under 4530(a)(1)(E), firms have to report if a member or associated member “is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any **felony**.” (emphasis added). Under 4530(a)(1)(F), firms have to report if a member or associated member “is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment adviser, underwriter or insurance company that . . . is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any **felony** or misdemeanor in a domestic or foreign court.” (emphasis added).

¹⁷ FINRA Rule 4530(a)(1)(E).

Ms. Jennifer Piorko Mitchell
March 9, 2020

Lastly, SIFMA and its members request clarification as to whether the language “taking false oath” or “making a false report” in Rule 4530(a)(1)(E); for example, would one or both include the act of using a fake ID in adolescence.¹⁸

Ambiguity Across Rule 4530 Regarding Dual Registrants. SIFMA and its members note significant ambiguity in interpreting Rule 4530 as it applies to broker-dealers that are also SEC-registered investment advisers.

Unlike FINRA’s regulation of broker-dealers, the SEC has no mandatory self-reporting requirement that applies to investment advisory business. Nevertheless, absent FINRA guidance, some industry participants may take the view that dual-registered broker-dealers must report violations to FINRA under Rule 4530 even if the conduct at issue involved solely only the investment advisory business. The reasoning appears to rely on two ideas. First, Rule 4530 applies to FINRA members. The reasoning appears to be that, for dual-registered member firms, any business it conducts, including the advisory business, is conducted by a FINRA member. Further, since Rules 4530(a)(1) and (b) require FINRA members to report violations of “investment-related laws,” dual-registered firms must report relevant conduct to FINRA even if the conduct involved only advisory business.

While likely unintended, we submit that FINRA lacks statutory authority to institute such a backdoor mandatory reporting requirement where the relevant conduct involves only investment advisory business and is not within FINRA’s regulatory jurisdiction. For this reason, SIFMA and its members are asking FINRA to resolve this ambiguity.

C. Discovery Date Data Field on the Disclosure Event Report
or the Complaints Reporting Form.

In the Rule 4530 “Disclosure Event Form Instructions,” FINRA provides that a “Discovery Date” is required to detail the “[c]ircumstances of how the firm is notified” of a Rule 4530 event, which FINRA caveats “may vary depending on the type of event.”¹⁹ SIFMA and its members ask that FINRA make clear that the “Discovery Date” guidance applicable to 4530(b) disclosures is likewise applicable to “Discovery Dates” required by other parts of the rule.

¹⁸ Under 4530(a)(1)(E), firms have to report if a member or associated member “is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the **taking of a false oath**, the **making of a false report**, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court.” (emphasis added).

¹⁹ FINRA, *4530 Disclosure Event Form Instructions*, Discovery Date (2017), https://www.finra.org/sites/default/files/4530_Events_Form_Help.pdf.

By clarifying these reporting requirements and related processes under Rule 4530, SIFMA and its members will improve their capabilities to effectuate consistent and thorough reporting to FINRA.

4. FINRA should modify certain reporting requirements and related processes under Rule 4530.

SIFMA and its members encourage FINRA to modify and update several existing reporting requirements under Rule 4530. We also encourage FINRA to consider adopting a more principles-based regulatory approach to Rule 4530(b).

A. Monetary Threshold for Withholding Compensation, Fines, or Remuneration after Disciplinary Action.

Under Rule 4530(a)(2), members must report disciplinary action against an associated person if the disciplinary action results in the withholding of compensation or of any other remuneration (*e.g.*, fines) in excess of \$2,500. The threshold amount of \$2,500 has been in place without revision for over 20 years. We believe the \$2,500 threshold is too low, and we ask that FINRA raise the amount. Although we believe the threshold is low, we also recognize that \$2,500 may be a substantial threshold amount for smaller firms. Therefore, rather than a fixed number, FINRA should institute a threshold amount that reflects the facts and circumstances of the firm and associated person at issue. This modification would adequately further the purpose of the disclosure while accounting for the varying range of firm sizes and resources.

B. Filing Copies of Felony and Misdemeanor Complaints, Indictments, and other related information under Rule 4530(f).

Rule 4530(f) requires members to file copies of criminal indictments, complaints or plea agreements.²⁰ State penal codes vary in how they differentiate a felony, a misdemeanor and complaints. This results in an offense being reportable because it rises to the level of a felony in one state when it would not be reportable in another state that does not recognize the same conduct as a felony. The conduct is the same, but there are disparate treatment and reporting requirements. For a more equitable reporting regime, SIFMA and its members encourage FINRA to be more specific with the reportable conduct that is applicable to 4530(f).

²⁰ The qualifying and reportable criminal conduct is found under FINRA Rule 4530(a)(1)(E).

C. The Definition and Handling of Written Complaints under Rule 4530.08.

FINRA currently defines “complaint,” for purposes of 4530(a)(1)(B) as “any written grievance by such person involving the member or a person associated with the member.”²¹ In light of the dramatic increased ease and use of electronic communications, such as email, online access feedback, and technology that allows texting and social media messaging between firms or financial advisors and their clients, FINRA should reconsider this existing definition of complaint to more closely align with the intent of the Rule. Additionally, FINRA should use resources to more effectively identify and separate complaints that should be reported via formal complaint resolution versus those that do not. By instituting these two suggestions, FINRA will help firms allocate resources and effectively resolve grievances with a basis for a formal complaint.

More specifically, the advent of electronic communications makes it very easy for institutional clients to vent frustrations that may not materialize into a formal complaint. For instance, under the current definition, a complaint sent over a text message is considered a “written grievance,” that requires a formal complaint resolution. Rather than a formal complaint resolution, the minor client frustration sent via text message could be resolved with a simple phone call to, for instance, walk the client through website navigation. This latter resolution process should be sufficient to resolve the complaint and quell the client’s concerns.

Our objective in asking FINRA to reconsider the definition of “complaint,” is not to eliminate or vastly reduce statistical reporting. Rather, the formal complaint resolution and reporting requirements for minor complaints or frustrations are not an effective use of resources. To more closely align with the original purpose of the complaint reporting requirement, FINRA should encourage firms to use resources to identify and address the problems, investor protection concerns, operational and service gaps and bad actors. Additionally, the uptick in these types of complaints has contributed to an already-mounting number of complaints, which in the aggregate have been unmanageable to survey.

D. Updating Problem Codes.

SIFMA and its members believe FINRA should modify and update the existing problem codes.²²

A New Problem Code for “Unauthorized Account Opening”. Recently, the public has become increasingly aware of the issue of “unauthorized account openings” following some significant regulatory actions. SIFMA and its members believe that none of the existing problem

²¹ FINRA Rule 4530.08.

²² FINRA, *Problem and Product Codes* (Oct. 1, 2014),

<https://www.finra.org/sites/default/files/Web%20-%20Complaints%20%20Problem%20and%20Product%20Codes%200.pdf>.

codes reflect or address this issue. Therefore, FINRA should be considered adding a problem code for an unauthorized account opening.

“Sales Practice” and “Non-Sales Practice” “Third-Party/Anonymous” (Problem Code 29) Complaints. Currently, FINRA separates out “Non-Sales Practice” problem codes, and “Third-Party/Anonymous,”²³ Problem Code 29, is not separated under “Non-Sales Practice.” FINRA should make the distinction between “Sales Practice,” “Third-Party/Anonymous,” complaints and “Non-Sales Practice,” “Third-Party/Anonymous,” complaints, because many third-party and anonymous complaints do not have an underlying issue that is sales practice-related. As such, it does not seem reasonable to ask firms to include those complaints in the sales practice-related category. As a possible solution, FINRA could break the third-party and anonymous problem codes into two—third-party/anonymous complaints in sales practice and third-party/anonymous complaints in non-sales practice. By doing so, firms could report third-party or anonymous complaints to more accurately reflect the underlying issue.

Problem Code 05 (“Failure to Follow Instructions”). Problem Code 05, “Failure to Follow Instructions,” includes “[a]llegations concerning the [registered representative’s] failure to follow specific instructions from the customer’s proper power of attorney holder or authorized parties of corporate or other entity accounts.”²⁴ SIFMA and its members encourage FINRA to eliminate or provide further guidance on Problem Code 05. Firms report that Problem Code 05 is challenging to differentiate from other, similar problem codes. As a result, Problem Code 05 is underutilized or foregone altogether. By eliminating or providing further guidance on Problem Code 05, firms will have greater clarity on how Problem Code 05 is expected to be utilized.

Problem Code 06 (“Documentation”). Problem Code 06, “Documentation,” includes “[a]llegations concerning material inaccuracies, omissions, or failures to obtain or provide required documents.”²⁵ Firms report that existing problem codes already include and address what Problem Code 06 describes. As a result, SIFMA and its members encourage FINRA to remove or clarify Problem Code 06 because it causes confusion. By eliminating or providing further guidance on Problem Code 06, firms will have greater clarity on how Problem Code 06 is expected to be utilized.

Problem Code 10 (“Disclosure of Fees”). Problem Code 10, “Disclosure of Fees,” includes “[a]llegations concerning the [registered representative’s] failure to advise or the

²³ Under Problem Code 29, “Third Party/Anonymous” are “[a]llegations received by an unauthorized third party or anonymous source.” See FINRA, *Problem and Product Codes*, *supra* n.22.

²⁴ *Id.*

²⁵ *Id.*

[registered representative’s] incorrect advice of back-end fees associated with the product.”²⁶ This includes “Contingent Deferred Sales Charges (CDSC), surrender penalties, but not commissions or managed account fees.” SIFMA and its members encourage FINRA to expand the definition of Problem Code 10 to include *all* fees and not just CDSC. This updated code would include, for example, maintenance fees and managed account fees.

E. FINRA Should Add a Problem Code for Complaints Arising out of Temporary Holds under Rule 2165 and Those Related to the Trusted Contact Persons Section of rule 4512.²⁷

One recent issue that firms have faced with Rule 4530 is the rule’s interplay with Rule 2165. Under Rule 2165, certain legal, compliance and supervisory personnel are permitted to temporarily delay disbursements from client accounts when there is a likelihood of financial exploitation. This new rule was widely supported by the industry and FINRA and the rule appears to be effective in helping to curb significant client losses due to exploitation. However, the industry remains concerned that a bad actor can weaponize the FINRA complaint process against an investment adviser – even when it is beyond the adviser’s authority to place a 2165 restriction on an account (as client-facing advisers can only escalate a concern to staff who can authorize a hold).

We contend that no adviser should have to worry about their livelihood and clean record when they escalate a good faith concern of exploitation within the firm. As such, SIFMA and its members strongly suggest FINRA either: (1) develop a new Rule 2165-specific problem code that would not be reportable on an advisor’s Form U4; or (2) issue guidance stating that any complaint stemming from a 2165 hold is not a sales practice issue and is therefore only reportable against the firm and not on an adviser’s Form U4.

F. Rule 4530(b) Report Submission Form.

On the 4530(b) report submission form in the Firm Gateway, SIFMA and its members ask that FINRA consider modifying the form to allow greater flexibility in filings. Specifically, because firms may report an issue before the firm has identified when the issue began or when it will be remediated, in lieu of requiring a firm to provide specific dates, the form should contain a free text field related to the time period for the conduct. In addition, firms should be able to include an attachment to the submission to provide additional information to FINRA to assist the staff in understanding the matter and better inform any follow-up that the staff deems fit to pursue.

²⁶ *Id.*

²⁷ FINRA Rule 4512, *Customer Account Information*, Rule 4512.06.

G. Incorporating Rule 4530.10 (“Findings and Actions by FINRA” within the application rules under 4530(a).

Rule 4530.10 provides that members are “not required to report findings and actions by FINRA” under Rules 4530 (a)(1)(A), (C), and (D). FINRA should incorporate Rule 4530.10 into the applicable sections under Rule 4530. This would increase clarity under these respective sections.

By updating these reporting requirements and related processes under Rule 4530, member firms will improve their capabilities to effectuate consistent, clear, and accurate reporting to FINRA.

H. Consider Adopting A More Principles-Based Regulatory Approach To Rule 4530(B).

Departing from the current rigid, rules-based approach to self-reporting and adopting a more flexible, principles based approach, would effectively preserve FINRA’s core investor protection mission while making more efficient use of critical firm resources. We believe that the key principles undergirding Rule 4530 should be to encourage firms to identify and remediate regulatory violations and to be given meaningful credit for disclosing such violations to FINRA along with significant cooperation. Such proactive measures by firms certainly work to the benefit of investors, while reducing the regulatory burden on FINRA. These objectives are more effectively achieved when Firms have the ability to make self-reporting decisions in a more holistic manner. Under the current system, in the experience of numerous member firms, disproportionate time and resources are devoted to making reporting decisions that are unduly complicated by the existing rules-based regime. We think a more flexible approach would provide better regulatory outcomes through a more efficient and effective process.

5. FINRA should modernize its processes.

SIFMA and its members encourage FINRA to modernize the processes for complying with the reporting obligations under Rule 4530. This includes incorporating general technological advances and giving firms access to underlying report data and previous filings.

Technological Advances. SIFMA and its members generally encourage FINRA to consider incorporating technological advances into its processes. Technological advances should create synergies of previously disparate systems to ultimately help eliminate duplicative reporting requirements.²⁸ As previously mentioned, members have reported experiencing frustration with

²⁸ See Section 2 on Rule 4530(d).

the complicated and cumbersome user interfaces. We will note, however, that the concept behind the bulk file transfer is a positive step toward consolidation and innovation. However, as is, the interface is simply not user-friendly. There is also a lack of consolidation between the various data transfer tools and uploading platforms. SIFMA and its members ask that FINRA consider working toward further advancing its technologies for simpler, less redundant, and more streamlined processes.

By incorporating these advances and making improvements certain reporting burdens will be reduced, and FINRA will have a more streamlined flow of relevant information.

Accessibility to Underlying Report Data and Previous Filings. FINRA requires firms to submit report data and several Rule 4530 filings. However, firms report challenges associated with accessing and viewing previously reported data and Rule 4530 filings. As a result, SIFMA and its members encourage FINRA to make the underlying report data available and more accessible to firms. After submitting the electronic reports, firms report that it is difficult to export or extract the data for analysis.

Additionally, we ask that FINRA make previous Rule 4530 filings more accessible to firms. For example, FINRA should implement a report function that allows firms to pull a report of previous filings and a more efficient search function that allows firms to open multiple filings at a time while using search filters. By doing so, firms would be able to comprehensively review and organize files submitted to FINRA under Rule 4530.

By modernizing these reporting requirements and related processes under Rule 4530, FINRA will enable member firms to more successfully adapt to novel and evolving industry challenges.

6. Other Considerations Regarding Rule 4530.

SIFMA and its members encourage FINRA to implement an internal cost-benefit analysis and to continue recognizing the progress firms have made under 4530(b).

Internal Cost-Benefit Analysis. Rather than continuing to impose new, additional reporting requirements on firms, we ask FINRA to conduct a cost-benefit analysis to make better use of data already submitted to FINRA or to the SEC via CRD. FINRA already receives data from firms via Form U4 and Form U5 and could utilize this information rather than asking for more and duplicative information from firms. We believe that the result of such internal cost-benefit analysis will ultimately improve the organization and efficiency within the overall reporting and data-gathering process.

Ms. Jennifer Piorko Mitchell
March 9, 2020

Recognizing Firm Progress. SIFMA and its members recognize and appreciate the progress FINRA has made in acknowledging firms that self-report and provide extraordinary cooperation to FINRA, and the guidance published by FINRA in July 2019.²⁹ It appears that such recognition is sometimes included in press releases but not consistently. SIFMA and its members hope that recognition continues and ask that FINRA include such recognition in press releases, not just in settlement documents. FINRA should also recognize firms' efforts related to self-reporting by stating that it will not question firms' deliberations or rationale for determining whether conduct reaches the reportability threshold of Rule 4530(b) in circumstances where the firms follow procedures that include the elements described in Regulatory Notice 11-32 and a well-documented process, regardless of whether FINRA agrees with the outcome of the process.³⁰

IV. Conclusion

SIFMA and its members appreciates the opportunity to comment on FINRA's retrospective rule review of Rule 4530. We commend FINRA on their continued efforts to enhance Rule 4530 and its accompanying requirements and hope that our feedback is helpful in developing an improved rule.

* * *

²⁹ FINRA, *Regulatory Notice 19-23* (July 2019), <https://www.finra.org/rules-guidance/notices/19-23>.

³⁰ FINRA, *Regulatory Notice 11-32* (July 2011), <https://www.finra.org/sites/default/files/NoticeDocument/p123929.pdf>.

Ms. Jennifer Piorko Mitchell
March 9, 2020

If you have any questions or would like additional information, please contact Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA, at (202) 962-7386 (kzambrowicz@sifma.org) or our counsel, Marlon Paz, Mayer Brown LLP, at (202) 263-3044 (mpaz@mayerbrown.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Zambrowicz", is centered below the closing. The signature is fluid and cursive.

Kevin Zambrowicz
*Managing Director &
Associate General Counsel*

cc: Mary Beth Findlay, Co-Chair, SIFMA Compliance & Regulatory Policy Committee
Ann McCague, Co-Chair, SIFMA Compliance & Regulatory Policy Committee

Marlon Q. Paz, Mayer Brown LLP