

## OMB APPROVAL

OMB Number: 3235-0045  
 Estimated average burden  
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 50	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR - 2020 - * 041 Amendment No. (req. for Amendments *) 2
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input type="checkbox"/> Amendment * <input checked="" type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>	Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/> Exhibit 3 Sent As Paper Document <input type="checkbox"/>		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>		
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.		
First Name * Michael Last Name * Garawski Title * Associate General Counsel E-mail * Michael.Garawski@finra.org Telephone * (202) 728-8835 Fax (202) 728-8264		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. <div style="text-align: right;">(Title *)</div> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 30%;">         Date 07/20/2021          By Patrice Gliniecki          (Name *)       </div> <div style="width: 60%; text-align: center;">         Senior Vice President and Deputy General Counsel  <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-top: 10px;">Patrice Gliniecki,</div> </div> </div> <p style="font-size: small; margin-top: 10px;">NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</p>		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On November 16, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change, SR-FINRA-2020-041, to: (1) adopt Rule 4111 (Restricted Firm Obligations) to require member firms that are identified as “Restricted Firms” to maintain a deposit in a segregated account from which withdrawals would be restricted, adhere to specified conditions or restrictions, or comply with a combination of such obligations; and (2) adopt a new Rule 9561 (Procedures for Regulating Activities Under Rule 4111), and amend Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), to create a new expedited proceeding to implement proposed Rule 4111.

The Commission published the proposed rule change for public comment in the Federal Register on December 4, 2020.<sup>1</sup> The Commission received seven comment letters directed to the rule filing.<sup>2</sup> On January 12, 2021, FINRA consented to an extension of the time period for SEC action on the proposed rule change to March 4, 2021. On March 4, 2021, FINRA submitted a response letter to the comments. As FINRA explained in more detail in that response to comments, four commenters generally supported the proposal,<sup>3</sup> and three commenters were generally unsupportive.<sup>4</sup> On March 4, 2021, the Commission issued an order instituting proceedings to determine

---

<sup>1</sup> See Securities Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540 (December 4, 2020) (Notice of Filing of File No. SR-FINRA-2020-041).

<sup>2</sup> See Letter from Richard J. Carlesco Jr., CEO, IBN Financial Services, Inc., dated December 15, 2020 (“IBN”); Letter from Andrew R. Harvin, Partner, Doyle, Restrepo, Harvin & Robbins, LLP, to Secretary, SEC, dated December 21, 2020 (“Harvin”); Letter from Lev Bagramian, Senior Securities Policy Advisor, and Michael J. Hughes, Program & Research Assistant, Better Markets, Inc., to Vanessa A. Countryman, Secretary, SEC, dated December 28, 2020 (“Better Markets”); Letter from Lisa Hopkins, NASAA President, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated December 28, 2020 (“NASAA”); Letter from David P. Meyer, President, Public Investors Advocate Bar Association, to Vanessa Countryman, Secretary, SEC, dated December 28, 2020 (“PIABA”); Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated December 28, 2020 (“SIFMA”); and Letter from Ruben Huertero, Legal Intern, and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Securities Arbitration Clinic at St. John’s University School of Law, to Vanessa Countryman, SEC, dated December 28, 2020 (“St. John’s Clinic”).

<sup>3</sup> See NASAA, PIABA, SIFMA, St. John’s Clinic.

<sup>4</sup> See Better Markets, Harvin, IBN.

whether to approve or disapprove the proposed rule change.<sup>5</sup> On May 7, 2021, FINRA consented to an extension of the time period for SEC action on the proposed rule change to July 30, 2021. On May 14, 2021, FINRA filed Partial Amendment No. 1, which proposed a technical correction to the definition of “Member Firm Pending Events” in proposed Rule 4111(i)(4)(E).

With this Partial Amendment No. 2, FINRA is proposing changes to proposed Rule 4111 to clarify that a Restricted Deposit Requirement would require the member firm to promptly deposit in a Restricted Deposit Account cash or qualified securities with an aggregate value that is not less than the firm’s Restricted Deposit Requirement,<sup>6</sup> but would not require the firm to make additional deposits in order to maintain continuously the original value of the qualified securities in its Restricted Deposit Account, if such qualified securities have declined in value.<sup>7</sup> Likewise, if the aggregate value of the assets deposited by a member firm to comply with its Restricted Deposit Requirement increases above the firm’s Restricted Deposit Requirement, that would not be a basis for the firm to request a withdrawal from its Restricted Deposit Account.<sup>8</sup> However, if and when FINRA re-designates a member firm as a Restricted Firm and the member is subject to a Restricted Deposit Requirement, the member would be required to promptly after such re-designation (or, in the case where a hearing is requested pursuant to proposed Rule 9561, promptly after the Office of Hearing Officers or the National Adjudicatory Council issues a written decision under Rule 9559) deposit additional cash or qualified securities in the member’s Restricted Deposit Account to the extent necessary to cause the

---

<sup>5</sup> See Securities Exchange Act Release No. 91258 (March 4, 2021), 86 FR 13780 (March 10, 2021) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change in SR-FINRA-2020-041).

<sup>6</sup> Funds or securities on deposit in a Restricted Firm’s Restricted Deposit Account are not held with respect to any particular claim, or class of claimants, against the Restricted Firm. In the event of a liquidation of a Restricted Firm, funds or securities on deposit in the Restricted Deposit Account would be additional financial resources available to satisfy claims against the Restricted Firm.

<sup>7</sup> See proposed changes to proposed Rule 4111(a) (General), (d) (Consultation), (e) (Department Decision and Notice), (f) (Continuation or Termination of Restricted Firm Obligations), (i)(14) (Restricted Deposit Account), and (i)(15) (Restricted Deposit Requirement).

<sup>8</sup> In its March 4, 2021 response to comments, FINRA explained that proposed Rule 4111 would permit a Restricted Firm to satisfy a Restricted Deposit Requirement “only with the same assets that the SEC permits a broker-dealer to use to satisfy its reserve deposit obligations under Exchange Act Rule 15c3-3(e).” The purpose of that reference to Exchange Act Rule 15c3-3(e) (17 CFR 240.15c3-3(e)) was to explain why cash and qualified securities would be the types of assets that a firm could deposit to comply with a Restricted Deposit Requirement.

aggregate value of the cash and qualified securities in the member's Restricted Deposit Account to be not less than its re-designated Restricted Deposit Requirement.<sup>9</sup>

With this Partial Amendment No. 2, FINRA is including Exhibit 3g, which provides additional clarity concerning the proportion of firms that would have met the Preliminary Criteria for Identification during the 2013-2019 review period, Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 2, marked to show the change to the text as proposed in the original filing and Partial Amendment No. 1, and Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 2.

---

<sup>9</sup> See proposed changes to proposed Rule 4111(f)(2).

**Exhibit 3g: Distribution of Firms Meeting the Preliminary Criteria for Identification by Firm Size\***

Identification Year	FINRA Registered Member Firms				Firms Meeting the Preliminary Criteria for Identification							
	Small	Mid-Size	Large	Total	Small	Mid-Size	Large	Total	Small	Mid-Size	Large	Total
	Number of Firms				Number of Firms				Percentage of FINRA Registered Member Firms			
2013	3,757	214	169	4,140	72	3	2	77	1.9%	1.4%	1.2%	1.9%
2014	3,685	207	178	4,070	75	4	1	80	2.0%	1.9%	0.6%	2.0%
2015	3,567	194	181	3,942	67	4	1	72	1.9%	2.1%	0.6%	1.8%
2016	3,464	194	179	3,837	57	4	1	62	1.6%	2.1%	0.6%	1.6%
2017	3,348	195	178	3,721	53	6	0	59	1.6%	3.1%	0.0%	1.6%
2018	3,241	192	173	3,606	52	7	0	59	1.6%	3.6%	0.0%	1.6%
2019	3,156	198	168	3,522	40	5	0	45	1.3%	2.5%	0.0%	1.3%

\*The statistics correspond to the number of firms that would have met the Preliminary Criteria for Identification as of year-end (December 31st) of the identification year. FINRA defines a small firm as a member with at least one and no more than 150 registered persons, a mid-size firm as a member with at least 151 and no more than 499 registered persons, and a large firm as a member with 500 or more registered persons. *See* FINRA By-Laws, Article I.

## **Exhibit 4**

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in the original filing and Partial Amendment No. 1 shown as if adopted. Proposed new language in this Partial Amendment No. 2 is underlined; proposed deletions in this Partial Amendment No. 2 are in brackets.

\* \* \* \* \*

### **FINRA Rules**

\* \* \* \* \*

#### **4000. FINANCIAL AND OPERATIONAL RULES**

\* \* \* \* \*

##### **4111. Restricted Firm Obligations**

###### **(a) General**

A member designated as a Restricted Firm shall be required, except as provided in paragraphs (e) and (f) of this Rule, to establish a Restricted Deposit Account and [maintain]deposit 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) through (c) No Change.

###### **(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]be subject to a 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]subject to the maximum Restricted Deposit Requirement.

(A) No Change.

(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]subject to 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) through (3) No Change.

**(e) Department Decision and Notice**

**(1) Department Decision**



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

(A) No Change.

(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) of this Rule that it should be designated as a Restricted Firm that [must maintain]shall be subject to 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) of this Rule that it should be designated as a Restricted Firm but that it has rebutted the presumption in paragraph (d)(1)(B) of this Rule that it [must maintain]shall be subject to 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 latest letter provided to the member under paragraph (d)(2) of this Rule, the Department shall issue a notice of the Department's decision pursuant to Rule 9561(a) that states the obligations to be imposed on the member, if any, under this Rule 4111 and the ability of the member under Rule 9561 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 9561(a), except that for a notice under Rule 9561(a) a member [obligated to maintain]subject to a Restricted Deposit Requirement shall be required to [maintain]deposit in a Restricted Deposit Account the lesser of 25 percent of its Restricted Deposit Requirement or 25 percent 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 9559; provided, however, that a

member that has been re-designated as a Restricted Firm as set forth in paragraph (f)(2) of this Rule and is already subject to a previously imposed Restricted Deposit Requirement shall be required to [maintain the full amount of its Restricted Deposit Requirement]keep in the Restricted Deposit Account the assets then on deposit therein until the Office of Hearing Officers or NAC issues a written decision under Rule 9559.

**(f) Continuation or Termination of Restricted Firm Obligations**

(1) No Change.

**(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) of this Rule, the Department shall provide a written letter to the member stating that it shall be re-designated as a Restricted Firm, and that 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 seven days of the date of the letter, 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) of this Rule. When FINRA re-designates a member as a Restricted Firm and the member is subject to a Restricted Deposit Requirement, the member shall promptly after such re-designation (or, in the case where a hearing is requested pursuant to Rule 9561, promptly after the Office of Hearing Officers or the NAC issues a written decision under Rule 9559) deposit additional cash or qualified securities in the member's Restricted Deposit Account to the extent necessary to cause the aggregate value of the cash and qualified securities in the member's Restricted Deposit Account to be not less than its re-designated Restricted Deposit Requirement.

(3) No Change.

(g) through (h) No Change.

**(i) Definitions**

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

(1) through (13) No Change.

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

(A) No Change.

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

(i) through (iii) No Change.

(iv) that if the member becomes a Former Member, the [Restricted Deposit Requirement]assets deposited in the Restricted

Deposit Account to satisfy the Restricted Deposit Requirement  
shall be [maintained]kept in the Restricted Deposit Account, 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 paragraphs (f)(1) and (f)(3) of this Rule; and

(v) No Change.

(C) No Change.

(15) The term "Restricted Deposit Requirement" means [the deposit to be  
maintained by the member as follows]one of the following amounts:

(A) through (C) No Change.

(16) through (17) No Change.

• • • **Supplementary Material:** -----

.01 through .03 No Change.

\* \* \* \* \*

## **Exhibit 5**

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

### **FINRA Rules**

\* \* \* \* \*

#### **4000. FINANCIAL AND OPERATIONAL RULES**

\* \* \* \* \*

##### **4111. Restricted Firm Obligations**

###### **(a) General**

A member designated as a Restricted Firm shall be required, except as provided in paragraphs (e) and (f) of this Rule, to establish a Restricted Deposit Account and deposit in that account 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 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) of this Rule, 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) of this Rule, 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 be subject to a Restricted Deposit Requirement or 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 subject to 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 subject to 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 or that will proceed to a Consultation pursuant to paragraph (f)(2) of this Rule at least seven days prior to the Consultation, of the date, time and place of the Consultation and shall coordinate with the member to schedule further meetings as necessary. A Consultation shall begin at the time scheduled, unless the Department, for good cause shown by the member, provides a written letter that postpones the commencement of the Consultation. Postponements shall not exceed 30 days unless the member establishes the reasons a longer postponement is 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 latest letter provided to the member under paragraph (d)(2) of this Rule, 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) of this Rule 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) of this Rule that it should be designated as a Restricted Firm that shall be subject to 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 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) of this Rule that it should be designated as a Restricted Firm but that it has rebutted the presumption in paragraph (d)(1)(B) of this Rule that it shall be subject to 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 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 latest letter provided to the member under paragraph (d)(2) of this Rule, the Department shall issue a notice of the Department's decision pursuant to Rule 9561(a) that states the obligations to be imposed on the member, if any, under this Rule 4111 and the ability of the member under Rule 9561 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 9561(a), except that for a notice under Rule 9561(a) a member subject to a Restricted Deposit Requirement shall be required to deposit in a Restricted Deposit Account the lesser of 25 percent of its Restricted Deposit Requirement or 25 percent 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

9559; provided, however, that a member that has been re-designated as a Restricted Firm as set forth in paragraph (f)(2) of this Rule and is already subject to a previously imposed Restricted Deposit Requirement shall be required to keep in the Restricted Deposit Account the assets then on deposit therein until the Office of Hearing Officers or NAC issues a written decision under Rule 9559.

**(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. There shall be a presumption that the Department shall deny an application by a member or Former Member that is currently designated as a Restricted Firm to withdraw all or any portion of its Restricted Deposit Requirement. An application under this paragraph for a withdrawal from a Restricted Deposit Requirement shall comply with the content requirements in paragraph (f)(3)(A)(i) through (iv) of this Rule.

**(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) of this Rule, the Department shall provide a written letter to the member stating that it shall be re-designated as a Restricted

Firm, and that 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 seven days of the date of the letter, 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) of this Rule. When FINRA re-designates a member as a Restricted Firm and the member is subject to a Restricted Deposit Requirement, the member shall promptly after such re-designation (or, in the case where a hearing is requested pursuant to Rule 9561, promptly after the Office of Hearing Officers or the NAC issues a written decision under Rule 9559) deposit additional cash or qualified securities in the member's Restricted Deposit Account to the extent necessary to cause the aggregate value of the cash and qualified securities in the member's Restricted Deposit Account to be not less than its re-designated Restricted Deposit Requirement.

**(3) Previously Designated Restricted Firms**

(A) 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:

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

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

(iii) 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

(iv) include evidence that there are no "Covered Pending Arbitration Claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding against the member,

the member's Associated Persons or the 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.

(B) 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 presumptions that the Department shall: (i) approve an application for withdrawal if the member, the member's Associated Persons, or the Former Member have no "Covered Pending Arbitration Claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding; and (ii) (a) deny an application for withdrawal if the member, the member's Associated Persons who are owners or control persons, or the Former Member have any "Covered Pending Arbitration Claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding, or if the member's Associated Persons have any "Covered Pending Arbitration Claims," unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding that involved conduct or alleged conduct that occurred while associated with the member; but (b) approve an application by a Former Member for withdrawal if the Former Member commits in the manner specified by the Department to use the amount it seeks to withdraw from its Restricted Deposit to pay the Former



Member's specified 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 9561(a).

**(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 9561(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," for purposes of this Rule 4111, means an investment-related, consumer initiated claim filed against the member or its Associated Persons in any arbitration forum 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, and shall be the maximum amount for which the member or Associated Person, as applicable, is potentially liable regardless of whether the claim was brought against additional persons or the Associated Person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

(3) The term "Department" means FINRA's Department of Member Regulation.

(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:

(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 litigation 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 SEC 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 SEC 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 at a previous member 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 from a previous member after allegations; or

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

(D) "Member Firm Adjudicated Events" means any one 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 SEC 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 regulatory action that was brought by the SEC or CFTC, other federal regulatory agency, a state regulatory

agency, a foreign financial regulatory authority, or a self-regulatory organization; or

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

(F) "Registered Persons Associated with Previously Expelled Firms" means any Registered Person In-Scope who was registered for at least one year with a previously expelled firm and whose registration with the previously expelled firm terminated during the Evaluation Period.

(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 among 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 a previous 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, 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, 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.



Firm Size Category	Number of Registered Persons In-Scope in Firm Size Category	Preliminary Identification Metrics Thresholds					
		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	0.30
2	5-9	0.30	0.20	0.10	0.30	0.10	0.25
3	10-19	0.20	0.10	0.10	0.30	0.05	0.20
4	20-50	0.20	0.10	0.10	0.20	0.02	0.15
5	51-150	0.20	0.05	0.10	0.15	0.01	0.03
6	151-499	0.15	0.05	0.10	0.10	0.01	0.01
7	500+	0.10	0.05	0.10	0.05	0.01	0.01

(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 assets deposited in the Restricted Deposit Account to satisfy the Restricted Deposit Requirement shall be kept in the Restricted Deposit Account, 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 paragraphs (f)(1) and (f)(3) of this Rule; 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 one of the following amounts:

(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, revenues, commissions, assets, liabilities, expenses, net capital, the number of offices and registered persons, the nature of the disclosure events counted in the numeric thresholds, insurance coverage for customer arbitration awards or settlements, concerns raised during FINRA exams, and the amount of any of the firm's or its Associated Persons' Covered Pending Arbitration Claims, unpaid arbitration awards or unpaid settlements related to arbitrations. 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) of this Rule 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) of this Rule.

(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 FINRA 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.

**.03 Examples of Conditions and Restrictions.** For purposes of this Rule, the conditions or restrictions that the Department may impose include, but are not limited to, the following:

(a) limitations on business expansions, mergers, consolidations or changes in control;

- (b) filing all advertising with FINRA's Department of Advertising Regulation;
- (c) imposing requirements on establishing and supervising offices;
- (d) requiring a compliance audit by a qualified, independent third party;
- (e) limiting business lines or product types offered;
- (f) limiting the opening of new customer accounts;
- (g) limiting approvals of registered persons entering into borrowing or lending arrangements with their customers;
- (h) requiring the member to impose specific conditions or limitations on, or to prohibit, registered persons' outside business activities of which the member has received notice pursuant to Rule 3270; and
- (i) requiring the member to prohibit or, as part of its supervision of approved private securities transactions for compensation under Rule 3280 or otherwise, impose specific conditions on associated persons' participation in private securities transactions of which the member has received notice pursuant to Rule 3280.

\* \* \* \* \*

## **9500. OTHER PROCEEDINGS**

\* \* \* \* \*

### **9550. Expedited Proceedings**

\* \* \* \* \*

### **9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

- (a) No Change.
- (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 and 9561, 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 9561(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 10[ten] business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(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 10[ten] business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) No Change.

(4) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9561(a).

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

(1) For proceedings initiated under Rules 9553, 9554, [and] 9556(h) and 9561, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) through (6) No Change.

**(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 9561(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 10[ten] business days, the requirement [and/]or restriction specified in the notice shall not be further stayed.

**(f) Time of Hearing**

(1) No Change.

(2) A hearing shall be held within 10[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 9561(b) files a written request for a hearing with the Office of Hearing Officers.

(4) No Change.

(5) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rule 9561(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]) of this Rule 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) through (2) No Change.

(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 9561(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 9561(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 9561(b), and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555 or 9561(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 9561(b), and not less than seven days before the hearing in an action brought under Rules 9551 through 9555 or 9561(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) through (m) No Change.

**(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 9561, 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) No Change.

(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) through (5) No Change.

(6) In any action brought under Rule 9561(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 9561(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 9561**

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) through (4) No Change.

(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 9561, 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) No Change.

**(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) through (5) No Change.

(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) through (r) No Change.

**9561. Procedures for Regulating Activities Under Rule 4111**

**(a) Notices Under Rule 4111**

**(1) Notice of Requirements or Restrictions**

FINRA's Department of Member Regulation ("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 9559.

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 9559(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 25 percent of its restricted deposit requirement or 25 percent 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 9559. 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 this paragraph (b) in accordance with the service provisions in paragraph (a)(2) of this Rule.

**(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 9559. 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 9559(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) of this Rule shall become effective seven days after service of the notice, unless stayed by a request for hearing pursuant to Rule 9559.

**(5) Request for a Hearing**

A member served with a notice under paragraphs (b)(1) and (b)(2) of this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. 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.

\* \* \* \* \*

**Capital Acquisition Broker Rules**

\* \* \* \* \*

**400. FINANCIAL AND OPERATIONAL RULES**

\* \* \* \* \*

**412. Restricted Firm Obligations**

All capital acquisition brokers are subject to FINRA Rule 4111.

\* \* \* \* \*

**Funding Portal Rules**

\* \* \* \* \*

**900. Code of Procedure.**

**(a) Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals**

Except for the FINRA Rule 9520 Series, FINRA Rule 9557, FINRA Rule 9561, and the FINRA Rule 9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

(1) through (9) No Change.

(b) No Change.

\* \* \* \* \*