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VIA ELECTRONIC FILING: Pubcom@finra.org

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

RE: **Proposed Rule Changes Proposed in Regulatory Notice 18-16 to Amend Rule 9200 Series, 9300 Series, 9520 Series, Rule 8312, NASD Rule 1010 Series**

Dear Ms. Mitchell:

Luxor Financial Group and Managing Director, former Member of FINRA Board of Governors Mr. Ken Norensberg, thank you for the opportunity to comment on the proposed rule changes put forth in Regulatory Notice 18-16. As a New York based broker dealer consulting firm, Luxor Financial Group regularly consults with broker dealers and their registered representatives when they are directly impacted by implemented rule changes. As such, we are compelled to voice our opinion to some of the proposed rule changes as follows:

1. Proposed Amendment to Rule 9285

The proposed rule change would authorize the order of sanctions during the pendency of an appeal to the NAC, including bars or expulsions. The "reasonably necessary" test suggested as a guide in considering whether sanctions should be imposed on a respondent is no bar to the imposition of sanctions in nearly every case. This standard will have a chilling effect on respondents who may legitimately seek to preserve their reputation and livelihood through the appeals process. Depending on the sanctions imposed, respondents will find themselves unable to afford ongoing legal representation, or will prevail only to find their book of business and reputation have suffered irreversible damage. Conditions and restrictions on respondents must be stayed during pendency of appeal except upon a showing of clear and convincing evidence of *imminent harm to the public.* This is consistent with past practice. The Hearing Panel or Hearing Officer must follow a strict standard if we seek to preserve the even-handed nature of the self-regulatory process. Additionally, if the proposed rule change is deemed sufficient to prevent customer harm during the pendency of an appeal, it should not also be necessary to further impose an automatic trigger for a mandatory written heightened supervision regime under proposed Rule 9285(c).

2. Proposed Amendment to Rule 8312

The proposed rule change to disclose the status of a Member Firm as a "Taping Firm" is unconscionable and is seemingly designed as a punitive measure that will disproportionately cause reputational damage to small Firms. This type of reporting is likely to damage public trust in the industry unnecessarily. It may impact the ability of a small Firm to expand their business to a degree that is both unforeseeable and unmeasurable. Further, this will encourage a public perception that the Firm and all registered representatives of that Firm to be viewed negatively by association for behavior which had been perpetrated by another Firm and NOT by the current Firm for which the scarlet letter will now be attached to merely by taking in representatives through no fault of their own who are now guilty by past association and NOT of their own actions.

The notion that BrokerCheck, in conjunction with the taping rule itself, is insufficient to protect the public and incentivize careful research before investing, is simply wrong. It indicates a disregard for the agency of investors and the reputation and livelihoods of those serving them in this industry by unfairly maligning them through negative inference. We strongly object to this proposed change.

3. Proposed Amendment to Rule 1010 Series (MAP Rules)

Staff should reconsider the size and scope of the proposed definitions and to the degree that the proposed rule change would restrict the safe-harbor for expansion under IM-1011-1 and to the extent that restrictions to Membership may soon be imposed due to a criminal history for non-investment related activity.

The application process, whether, NMA or CMA, is already subject to a comprehensive review process in which the Department considers the material disciplinary history of associated persons. FINRA should not simply restrict ownership of a Member Firm due to any final criminal manner in the past five years which are not investment related and do not pose a future risk to the investment public. The Notice is indicating that the term "final criminal matter" seems to be a barometer for refusal simply by placing the word "criminal" as a prefix as opposed to the nature of the activity for which one was convicted. Certainly, jumping a turnstile or drinking in the public square or activities of a similar nature should not hold the same weight as a conviction of an egregious "criminal matter" or one that would be pertinent to ownership of a Member Firm such as perpetrating a fraud on the investing public. Broad based use of this type of definition would amount to double jeopardy and staff should reconsider the scope and nature of the "final criminal matter" and use a more narrow definition of the types of criminal events that would be considered as a disqualifier. Moreover, FINRA staff is well aware of a person's status through the Disclosure Reporting System and if they are currently registered without restriction, why would an additional consultation be necessary merely because such person is now in a non-controlling ownership position? MAP and Staff currently have the ability to question and consider explanations for "criminal events" at their will and no additional rules need to be created. In cases as specified in the notice, which, under Safe Harbor require no CMA or NMA to be filed, there is certainly no reason why a Firm should be required to file any consultation with MAP.

High Risk Brokers

As indicated in the Notice, Safe Harbor allows for the hiring of additional registered representatives over a specified number in a Member's Membership Agreement. The idea that staff should have the ability to determine who a Firm hires and that a Firm would have to consult with and give detailed explanations as to why they hire registered representatives who FINRA has given license to operate and who are not under a ban nor restricted in their business activities is counterintuitive. If Staff has not made an objection for them to continue in a licensed capacity and has not barred or otherwise precluded such registered persons from operating, then by extension, no additional "consultation" when a Firm wishes to hire someone should be required. The Safe Harbor Rule relating to personnel is primarily used by small Firms who may hire a small number of such representatives and would therefore be disproportionally affected by such a rule. Such a rule would then require an extension of time, effort and money which places an undue burden on such Firms when seeking to expand a small business.

FINRA has ample resources including a migration program which tracks the transfer of all registered persons. Staff can and does contact Firms on a regular basis when they have deemed a Firm to have hired "high risk brokers". Staff currently and consistently asks for detailed explanations from the Firms as to hiring criteria and supervision of such representatives whom FINRA themselves have seen fit to allow to remain licensed. As such, no additional requirements are necessary to be placed on Firms in order for FINRA to perform their mandate.

Specified Risk Event

The definitions of a "specified risk event" should have a higher dollar threshold ($50,000) as well as a shorter time limit for considerations placed on such events (12 months) and a larger number of events (5). Additionally, considerations such as the length of time that a registered representative has been active in the industry versus the number of events as well as the circumstances surrounding those events need to be considered when making a determination.

The current system in which plaintiff's counsel, or for that matter a non-attorney may file an action against a registered representative claiming any number of violations for the sole purpose of eliciting a quick settlement in which a person makes a business decision simply to avoid the time, energy and expense of a protracted arbitration to settle such action needs to be taken into consideration as well. Negative inference should never automatically be drawn simply because an event occurred.

Staff always has the ability to question events and ask for explanations. As such, a blanket policy cannot be made based simply on the occurrence of an event which can happen under many circumstances and would not be considered a risk to the public and therefore no additional mandates are necessary which place additional undue burdens on Firms.

Thank you for considering our comment,

Ken Norensberg

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