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Via email submission to pubcom@finra.org

June 30, 2019

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

Dear Ms. Mitchell:

Worden Capital Management, LLC ("WCM") is filing this response to certain proposed rule amendments and changes identified in FINRA's Regulatory Notice 19-17 ("the Notice"), during the comment period.

Regulatory Notice describes FINRA's proposed Rule 4111, which would create a classification of broker/dealers who would be so-called "Restricted Firms". The aim of this rule, as described in the Notice, is to "promote investor protection and market integrity and give FINRA another tool to incentivize member firms to comply with regulatory requirements and to pay arbitration awards." Respectfully, WCM submits that this proposed rule will do neither; instead this rule will cost broker/dealers and their representatives both money and time, which are already stretched thin for many member firms.

FINRA created BrokerCheck as a checks and balances tool, allowing the public to have access to CRD history, including regulatory actions, complaints and arbitrations, and past workplace transgressions. However, the process is allegation driven, forcing members to report items against their representatives without a scintilla of evidence being presented. In fact, FINRA currently requires that items be reported even if they have been able to determine that the allegations are FACTUALLY INACCURATE. This is astounding considering that we all live under a presumption of innocence under law until proven guilty. Basically, FINRA reporting requires a presumption of guilt until proven innocent. In a day and age where there are arbitration solicitation companies in existence, operating outside their jurisdiction, FINRA is looking to rely on the number of FINRA Dispute Resolution cases filed against member firms and their representatives as a determining factor for subjecting a member to this rule. It is commonly known throughout the industry, and within FINRA itself, that these companies act in an unscrupulous manner, as evidenced by FINRA's attempt to remove third-party non-attorney representatives from the Dispute Resolution process. In Regulatory Notice 17-34, FINRA describes in detail why it is proposing the prohibition of non-attorney third party representation (pp 2-3), including that these companies:

- Use the forum for inappropriate business practices;
- Require retainers of up to $25,000 for their services and are non-refundable;
- Represent parties in jurisdictions where state law prohibits such representations; and,
- Pursuing frivolous and stale claims to elicit settlements.

These concerns certainly indicate that FINRA is aware of the issues yet, seek to impose additional monetary and time requirements on member firms for these practices. It appears to be the height of hypocrisy.

Additionally, FINRA seeks to use pending regulatory proceedings as a metric for its determinations, even though they have not been adjudicated through any process. Again, FINRA is bypassing the presumption of innocence and any modicum of due diligence. If the member firm and its representatives are found to

have done nothing wrong, they have been exposed to the inclusion of the metric prior to being found guilty of any wrong-doing.

Lastly, WCM is of the opinion that FINRA has devised an artificial metric to rely on determining if a firm meets the initial criteria. Using the size of a member firm as a determining factor is truly arbitrary, considering that a member with over 1,300 reported disclosures on BrokerCheck (Merrill Lynch) would not be subject to the new rule, but a member of a lesser size could be considered for inclusion with perhaps 1-5 reported events. It also seems that the member firms are policing the activity of representatives themselves based on Attachment D to Regulatory Notice 19-17. The number of members who would meet the initial determining factor has dropped from 89 to 61 (2.1% of the membership to 1.7% of the membership). This would point to member firms taking their hiring practices seriously and policing themselves.

WCM appreciates the opportunity to give comment on the proposed rule and hopes that FINRA will take into consideration our comments and others to find that this rule, as currently composed, is not in anyone's best interest.

Thank you.

Sincerely,

Jamie John Worden
CEO, Worden Capital Management, LLC