I submit this comment in response to FINRA Notice 13-29, which requests comments on the FINRA new member and continuing member application processes. This notice proposes processes which are well-intentioned and represent a logical evolution of FINRA's existing processes - but I believe the proposal is a bad idea, and FINRA should re-think it from the ground up.

I regularly represent members of the financial services industry who are considering forming new regulated entities. (I write this comment letter solely in my personal capacity, not on behalf of my law firm or any client.) As I advise clients, they can have an SEC-registered investment adviser open and ready for business in a matter of days. Because FINRA gives itself 180 days to consider a broker-dealer new member application, and because FINRA can "reset the clock" on this deadline by deeming an application incomplete, I advise clients that they should plan for the new broker-dealer application to take up to a year. Few if any proposed businesses can survive a year's delay before they can earn their first dollar of revenue. Invariably, I counsel my clients that if they can formulate a business plan so that it requires investment adviser registration rather than broker-dealer registration, it is far preferable to be an investment adviser. If FINRA is concerned by the steady and significant decline in the number of registered broker-dealers in the US over the past ten years (and it should be very concerned), it need look no further than its new member application process.

The Dodd-Frank Act directed the SEC to consider harmonizing broker-dealer and investment adviser regulation, and the SEC staff, in its study responding to this direction, found that it would be desirable to harmonize these areas of regulation. Notice 13-29 makes no progress towards this goal; if anything, it makes two regulatory regimes even more different than they already are. I will pause to say that process proposed by FINRA may make some sense for a fully self-clearing broker-dealer that takes custody of retail customer funds and securities. But this is planning for unicorns. I doubt that a single fully self-clearing retail broker-dealer has filed a new membership application in the entire six years that FINRA has existed. For an ordinary introducing broker-dealer, the FINRA new member process represents regulatory over-kill. And for many institutional broker-dealer business models (for example a mergers-and-acquisitions boutique with no customer accounts that never handles customer funds or securities), the FINRA new member process borders on the irrational. I would urge FINRA to move to a three-tier process. For a new firm that proposes to operate a fully self-clearing retail broker-dealer (or an existing firm that proposes to convert to self-clearing status), I agree that a 180-day membership process may be appropriate. But for an introducing broker, FINRA should have a process that is completed within 30 days. And for $5,000 net capital broker-dealer that will not open customer accounts, FINRA should have an effective-on-filing process similar to the SEC's process for investment advisers. FINRA's proposals to require advance notice of certain activities, and to increase the number of circumstances in which a continuing membership application is required, will only exacerbate the differences between broker-dealer and investment adviser regulation.

I would like to comment on some particular elements of the new member application process. Everyone is against money-laundering. But I am unaware of a single example ever of someone using ownership of a broker-dealer to launder money. FINRA's requirement for extensive documentation of the sources of funds for capitalization of a new broker-dealer (or the purchase of an existing broker-dealer) is unnecessary. The trivial number of potential abuses in this area can be effectively addressed through enforcement; they do not need to be captured in the new member or continuing member processes. I believe the SEC's process with respect to investment advisers - in which they examine a new firm (typically within the first six months) to review its supervisory and compliance policies (including its AML procedures) is more effective than the FINRA process of reviewing those policies and procedures in the abstract before the firm has commenced operations. It is more effective to review the policies and procedures as they are actually implemented than to review them before the firm has even opened for business. While I agree that in-person interviews, detailed business plans, projected financial statements, descriptions of financial and operational controls, business contingency plans and copies of all material contracts might be necessary for a self-clearing retail broker-dealer, I do not believe they are necessary for other types of firms. The SEC does not any of require these items for any new investment advisers, and I do not believe FINRA has justified the differences in treatment.

The shortcomings of the new member application process are magnified when those requirements are incorporated into the continuing member application process. A simple application to expand a firm's number of branches, or number of registered representatives, must address all 14 factors set out in the rules, almost all of which are entirely irrelevant to that decision. The decision to centralize the new member and continuing member processes in a single group at FINRA – while made with the well-intentioned desire to standardize these processes – has had the result of making those processes more time-consuming and paper-intensive, without a corresponding increase in investor protection. The harm of the current approach is most apparent when a struggling broker-dealer attempts to bring in new investors. No lawyer would advise a client to close such a re-financing prior to FINRA approval - with the result that the broker-dealer is likely to go out of business in the meantime. FINRA's new member and continuing member processes are a substantial obstacle to capital formation (not only for the broker-dealers themselves but also for all of the clients who depend upon them), which should prevent the SEC (under Section 3(f) of the Exchange Act) from approving them in their current form. Moreover, the current processes create enormous barriers to entry for new broker-dealers (as well as on existing broker-dealers who wish to expand their lines of business), and therefore impose burdens on competition that also should prevent the SEC (under Section 3(f)) from approving these rules.

In short, FINRA should move towards a more streamlined, swift and principles-based approach to the new member and continuing membership processes. The current processes impose huge and unjustifiable costs (on

broker-dealers and as a result on their clients) without corresponding benefits. My conclusion is that the current processes are broken, and FINRA's proposed changes to those processes not only do not fix the current problems, they will make those problems worse. While I believe FINRA was well-intentioned in making this proposal, I urge it to start with a blank slate and re-think these rules in their entirety.

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