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Via ELECTRONIC Mail (pubcom@finra.org)

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

Re: Regulatory Notice 18-16: Comment on FINRA Rule Amendments Relating to High-Risk Brokers

Dear Ms. Mitchell:

Please accept this submission as MML Investors Services, LLC's ("MMLIS") comments in response to FINRA's Regulatory Notice 18-16: FINRA Requests Comment on FINRA Rule Amendments Relating to High-Risk Brokers and the Firms That Employ Them("RN 18-16" or the "Notice.")

MMLIS is MassMutual's retail broker-dealer and is headquartered in Springfield, Massachusetts. The firm's 8,500 registered representatives offer a variety of investment products and services to retail clients, including mutual funds and variable products.

Comment from the Firm

RN 18-16 proposes to amend a series of rules as follows to impose additional restrictions on firms that may have employed registered persons with a history of misconduct:

1. FINRA proposes to amend the Rule 9200 Series and the 9300 Series to allow hearing panels in enforcement matters to impose conditions and restrictions on the activities of a respondent in order to minimize customer harm, and for those conditions to be effective during an appeal of the Panel's decision to the National Adjudicatory Council and FINRA Board. The proposal also mandates heightened supervision while the enforcement hearing decision is on appeal;

2. FINRA proposes to amend the Rule 9520 Series to require that firms impose heightened supervision procedures on brokers who are subject to statutory disqualification and are seeking to have their eligibility reviewed by FINRA;

3. FINRA proposes to amend Rule 8312 to include in BrokerCheck reports disclosure of a firm being subject to the taping rule under Rule 3170; and

4. FINRA proposes to amend the NASD Rule 1010 Series by requiring that firms seek a materiality consultation from FINRA Member Regulation through the Membership Application Program Group ("MAP") when a natural person has, in the prior five years, one or more final criminal actions or two

or more specified risk events, and that individual seeks to become an owner, control person, principal or registered person of an existing member. Under this proposal, a firm would be required to file a CMA if FINRA determines that associating the individual constitutes a material change to the member's business.

MMLIS supports FINRA in its efforts to strengthen the rules concerning high-risk brokers and their impact on investors at large. Rule 3110 already requires broker-dealers to establish and maintain a system of supervision over associated persons and to take appropriate steps to provide oversight of any broker whose conduct does not comport with the standards of the firm or of FINRA rules. To that end, MMLIS supports and has no comment on the first three rule amendment proposals that are contained within the Notice. Instead, we direct our commentary to the fourth proposal, which concerns the materiality consultation requirement before MAP.

A. FINRA's proposed numeric thresholds for criminal actions and specified risk events are too low.

1. Criminal Actions

The amendment to the NASD Rule 1010 Series imposes a materiality consultation requirement where an individual who seeks to become an owner, control person, principal, or registered person has one or more final criminal matters or two or more specified risk events in a five-year period. The proposed rule defines a "final criminal matter" as "a final criminal matter that resulted in a conviction of or guilty plea or nolo contendere ('no contest') by a person that is disclosed or was required to be disclosed, on the applicable Uniform Registration Forms." Currently, an individual is required to amend their CRD if they have any felony charge or conviction (including felony DUI), as well as certain misdemeanor charges and convictions involving: investments or an investment-related business; any fraud, false statements or omissions; wrongful taking of property (stealing, theft or bounced checks); bribery; perjury; forgery; counterfeiting; extortion; or a conspiracy to commit any of the above.

While we agree that a firm should carefully perform due diligence before associating with an individual who has a final criminal matter on their CRD, the proposal as written establishes a threshold that will unfairly tarnish brokers who otherwise may not have any risk factors. For instance, a broker who was charged with a felony DUI that was subsequently reduced by plea agreement to a misdemeanor is still required to amend their disclosure form. As drafted, a firm would arguably be required to seek a materiality consultation on this history. Driving under the influence is a serious societal problem, but from an investor protection standpoint, this type of event presents a risk much lower than a misdemeanor forgery. Similarly, there could be an instance where an eighteen-year-old erroneously wrote a check with insufficient funds and was charged with, and convicted of, a misdemeanor. It is hard to see why such an event should trigger a materiality consultation in the interests of investor protection.

The Notice is also unclear as to how firms should treat individuals whose sentences have been deferred. Such individuals typically are able to clear their convictions if they complete the requisite court-ordered program. Are firms expected to treat these convictions as a final matter where the matter is pending completion of a court-ordered program and could ultimately be expunged?

MMLIS proposes that FINRA re-examine the criminal matter threshold and tailor it to only include those matters that would generate a risk of customer harm. In addition, MMLIS recommends that FINRA examine scenarios related to deferred sentencing and issue guidance to firms in connection with this proposal.

2. Specified Risk Events

MMLIS also has concerns regarding FINRA's proposal to require a materiality consultation when an individual has two or more specified risk events in a five-year period. The proposal defines "specified risk event" as:

> [A]ny one of the following events that are disclosed or are or were required to be disclosed on an applicable Uniform Registration Form:
>
> (1) a final investment-related, consumer initiated customer arbitration award or civil judgment against the person for a dollar amount at or above $15,000 in which the person was a named party;
> (2) a final investment-related, consumer-initiated customer arbitration settlement or civil litigation settlement for a dollar amount at or above $15,000 in which the person was a named party;
> (3) a final investment-related civil action where the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above $15,000; and
> (4) a final regulatory action where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines or restitution) were ordered for a dollar amount at or above $15,000; or (B) the sanction against the person was a bar (permanently or temporarily), expulsion, rescission, revocation, or suspension from associating with a member.

We believe that this threshold is too low and would have the effect of classifying a broker (or other named firm personnel) with an otherwise spotless record as "high risk" when, for example, one or more of the multiple complaints is baseless or relates to a product failure or a market downturn. This proposal also penalizes and tarnishes brokers and named firm personnel if the settlement is made by the firm strictly on economic grounds. Often these settlements are over $15,000, but are more likely to be less than $100,000. The low threshold of $15,000 will discourage named individuals from cooperating with these types of settlements, which will result in higher litigation and arbitration costs for all parties involved and a likely increase of expungement actions. MMLIS proposes that FINRA re-examine this provision and consider raising the number of risk events to two or more *unrelated* events. Also, FINRA should raise the settlement threshold to $100,000 or more. Such large settlements are far more likely to implicate the investor protection concerns behind this proposal.

B. The materiality consultation provision is vague.

The proposed rule as drafted does not clearly describe the materiality consultation requirements but merely states that the member must submit "a written letter to the Department, in a manner prescribed by FINRA, seeking a materiality consultation for the contemplated activity." While page 15 of the Notice does provide some guidance on information that should be included in the consultation, the rule itself is not specific. MMLIS recommends that FINRA clarify the rule to include an outline of those issues that would be central to the materiality determination as well as clarify the "manner prescribed "requirement.

C. The proposed rule is similarly vague on applicability.

Finally, the proposal lacks clarity on the population subject to the new requirements. For instance, it is unclear whether the rule will apply prospectively to new hires or whether a firm will be required to examine its existing associated persons. Similarly, it is not clear how the proposal would apply to individuals who change roles within a firm and may require a new registration level. This could lead to a significant burden and expense to firms if FINRA requires a firm to submit a materiality consultation for individuals who have already been affiliated with the firm in some capacity. MMLIS requests that FINRA clarify the scope of individuals impacted and tailor this rule to apply prospectively to new hires only.

Conclusion

MMLIS appreciates the opportunity to provide its comments to this proposal. If you should have any further questions regarding this comment, please do not hesitate to contact me.

Best regards,

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