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July 29, 2013

Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
100 F Street NE., Washington, DC
20549–1090

Re: SR–FINRA–2013–025

Ms. Murphy:

This letter is submitted in enthusiastic support for proposed FINRA Rule 3110. I fully believe investors will benefit if this Rule is enacted without delay, and I encourage all persons having authority for its approval to direct their influence to giving this proposed Rule immediate effect, absent any dilution.

While I give 3110 my unqualified support, I note that the Rule remains incomplete, that much can and should be done to protect investors beyond 3110's excellent strengthening of protection for compliance officers and 3110's increasingly clear mandate for a firm to keep its compliance department separate from and outside the influence of a firm's sales department.

It is an opinion borne of much experience within securities firms that investors receive the most practical protection from improper sales practices when a firm's compliance and supervisory personnel[1] are fully empowered to execute governing laws and rules without fear of reprisal from their employing firms. Investors receive strong protections when compliance and supervisory personnel are sufficient in number and have the ability to monitor, sanction, reject, disapprove and otherwise comment on the practices of the firm's sales force without fear of ostracism, demotion, reassignment or dismissal.

I have over a decade of experience as a compliance officer, securities attorney and regulator, and it is clear that the best hope for day-to-day protection of investors resides with a firm's compliance officers. Among all firm personnel, compliance officers are regularly those employees who have the greatest respect for and willingness to employ governing law and rule.

Unfortunately, compliance officers often lead very unhappy professional lives. They are keenly aware of FINRA Rules and FINRA's disciplinary actions, so they diligently attempt to abide by the regulations, but strict adherence to Rules is regularly seen as abridging or frustrating the firm's sales activities or the sales activities of a "star" representative. All too often, conversations of complaint are conducted between firm management and the members of the sales staff affected by the effective compliance, and the result of such conversations is that tremendous pressures are exerted downward within the firm on the would-be diligent and effective compliance officer.

[1] The terms "Compliance Officer" and "Supervisor" and "Compliance" and "Supervision" are used interchangeably in this letter, with no greater supervisory weight or distinction in job function being given to either term or department.

I believe a fair reading of 3110 finds FINRA creating a requirement for firms to have their compliance departments operate independently of their sales activities. Support for this reading is found in Rule 3110(b)(6) which requires firms to create:

> (C) procedures prohibiting associated persons who perform a supervisory function from:
>
> (i) supervising their own activities; and
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> (ii) reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising.
>
> and
>
> (D) procedures preventing the standards of supervision required pursuant to paragraph (a) of this Rule from being reduced in any manner, due to any conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised.

These are excellent Rules that should never be diluted, but they do not go far enough in providing full protection for compliance officers. It is a strong but fair criticism of FINRA that the organization imposes profound obligations on compliance officers but it does little to nothing to protect a compliance officer in the discharge of the Rules from the ire or his or her firm. "Shooting the messenger" occurs with unfortunate frequency at member firms, as compliance officers suffer the wrath of the firm for the requirements of FINRA compliance. I believe that Rule 3110 should, shortly upon enactment, be enhanced with further rules necessary to protect compliance officers and, ultimately, the investors they serve.

For your consideration, below are recommendations for additional rules that I believe should quickly become included in Rule 3110. I would encourage these recommendations to be incorporated in the proposed Rule, if inclusion of these recommendations would not delay its enactment.

Recommendation 1. Compliance staff should only be removed for cause, and FINRA should bring an immediate Rule 2010 action against a firm when a compliance officer is dismissed without cause. While it is possible for compliance officers to commit personnel violations such as not appearing for work or taking excessive time off from work, a far too common reason for compliance officer dismissal is that the compliance officer took his or her job too seriously and annoyed the sales side of the firm. As mentioned above, being a compliance officer is frequently a miserable job. Compliance officers serve under the inescapable weight and obligations of the Rules, while they work for firms that are driven by sales, dismissing compliance officers who dare to do their jobs too earnestly.

If FINRA wants effective compliance departments, a compliance officer must expressly be stated to have one foot in FINRA and the other in the firm. Consider a compliance officer jointly appointed, if you will. Dismissal of a compliance officer should be seen as tantamount to dismissing FINRA.

FINRA should impose a Rule requiring any compliance officer not dismissed for cause to be reinstated with back pay, and FINRA should ensure that the compliance officer's Form U-4 bears no adverse record of the event.

Recommendation 2. Impose a minimum ratio of producing representatives to compliance officers. It is perhaps self-evident that one person can only supervise so many representatives and transactions, advances in supervisory efficiency, notwithstanding. Firms often say "If they [FINRA] want me to do it, make a rule." I give FINRA my most urgent warning that unless such a minimum supervisory requirement is imposed, firms will attempt to run lean compliance departments, leaving firms heavily weighted on the sales side. FINRA audits are not bashful in noting that firms have underweighted compliance departments, so make this point explicit. Minimum compliance staffing levels should be mandatory and a non-negotiable obligation of increasing business size. Firms that operate purely inbound call teams should be exempted from such a requirement for these teams.

Recommendation 3. The Chief Compliance Officer ("CCO") should not be an executive of the firm, involved in the strategic direction of the firm or otherwise involved in a firm's revenue decisions, plans or discussions. In furtherance of FINRA's goal to separate a firm's compliance department from its sales activities, a CCO should be seen as among the highest executives in organizational rank and respect, but the CCO should not be involved in the firm's strategic planning or management. CCO's lose their professional detachment and primary loyalty to compliance when they are tasked with other firm obligations and become part of the firm's strategic planning. Ideally, the CCO should not be intimately aware of the firm's financial condition and goals, lest financial considerations influence compliance decisions.

Recommendation 4. Review of executive e-mail should not be performed by any member of the executive team. Firms frequently seal review of executive e-mail from all but a member of the executive team, and since the CCO is frequently a member of the executive team, it frequently occurs that only the CCO has access to executive e-mail. Such a state results in no effective executive e-mail review, at all.

Where a CCO is an executive of the firm, the CCO should not be the sole party responsible for review of executive e-mail; other non-executive persons should be granted full review authority. As suggested above, removing the CCO from executive functions permits the CCO to review executive e-mail, but it is never good practice to have e-mails solely reviewed by a single person.

Recommendation 5.

Part 1. Dispense with the outmoded distinction between Office of Supervisory Jurisdiction ("OSJ"), Branch Office, and office in a representative's home.

Part 2. Put all offices over a certain minimum business threshold on an annual audit cycle, as three years is far too long between audits.

Annual audits are an excellent compliance tool that prevent a representative from having too much time elapse between a detailed review of his or her books and records. A three-year interval is simply too long a space to afford regular and thorough oversight.

While an OSJ is a strong office that greatly adds to a firm's compliance structure and provides front-line oversight of a firm's sales activities, firms do not like performing audits, and they dislike the expense of audits, so they frequently structure or conspicuously limit the activities of branches to avoid falling under the definition of OSJ, avoiding the requirement for an annual audit.

The distinction among categories of office is long outmoded and should be abandoned. Any office outside the main office that conducts more than $300,000 in annual sales, to introduce a working figure, should be considered a Category 1 office and subject to an annual audit. Any office under $300,000 in annual sales should be considered a Category 2 office and placed on a two-year major/minor audit cycle.

For offices under $300,000 in sales, Year One would require a major audit, and Year Two would bring a minor audit. Any representative who changes firms would have to inform his or her broker-dealer of his or her most recent major audit to prevent two years from passing without a major audit being conducted.

Recommendation 6. FINRA should impose a rule requiring firms to perform a certain number of annual client surveys issued solely under the name and trade dress of the broker-dealer. As the ultimate object of good compliance is a satisfied client who has a healthy and growing portfolio that corresponds to the client's goals, these surveys could ask the investor questions across a range of topics, allowing a firm to tailor its compliance towards what is truly and ultimately important: a client's needs.

All too often, independent firms consider the registered representative the firm's client and not the investor. Independent firms far too frequently believe the investor is the client of the representative and not the firm, so firms are reluctant to contact clients directly for fear of offending the registered representative by appearing to compete for the representative's client.

In addition to ensuring a client's portfolio is performing as the client desires, client surveys conducted by the firm re-establish and reinforce the bond between investor and the broker-dealer.

Recommendation 7. FINRA should work toward standardizing compliance across all firms, ensuring a global baseline of compliance so substantial and common that firms will not use reduced compliance standards as a recruiting tool. Miserable is the compliance officer who attempts to enforce the Rules on a representative only to endure a chastising discussion in which it is revealed that the firm was able to land the representative because the firm made promises of

reduced compliance obligations to allow the representative to conduct his or her business faster and easier.

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For the protection of investors, I hope 3110 becomes quickly enacted and vigorously enforced. I further hope the gains in investor protection found in the Rule will become the foundation for further improvements in broker-dealer conduct and sales oversight. If any or all of the recommendations I have herein presented should become Rule, I am confident investor protection would be even more fortified.

Thank you for your consideration.

Regards,

/s/ Brian P. Sweeney