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Via Electronic Filing

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SR-FINRA-2009-042
Proposed Rule Change to Adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270

Dear Ms. Murphy

Thank you for the opportunity to comment on the Notice of Filing by the Financial Industry Regulatory Authority ("FINRA") of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Outside Business Activities of Registered Persons (the "Proposed Rule"). The Cornell Securities Law Clinic (the "Clinic") is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. *See* <http://securities.lawschool.cornell.edu>.

Notwithstanding the Proposed Rule's accelerated approval and FINRA's responses to previous comments, the Clinic is deeply concerned by the Proposed Rule's dilution of the prior notice and consent rule contained in Incorporated New York Stock Exchange ("NYSE") Rule 346(b). Even with FINRA's amended supplementary material, we believe that the proposed prior notice standard, absent a prior consent requirement, is insufficient to protect investors from the risks inherent in associated persons' outside business activities.

Background

FINRA is in the process of reconciling the National Association of Securities Dealers (NASD) Rules and Incorporated NYSE Rules to create a single consolidated FINRA rulebook. As part of this process, FINRA proposed adopting a modified version of NASD Rule 3030



(Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) and deleting NYSE Incorporated Rule 346(b).

Among other changes, FINRA Rule 3270 would require associated persons to give their member firm prior written notice before engaging in certain outside business activities. Currently, NASD Rule 3030 merely requires that such persons give prompt notice of outside business activity, while NYSE Incorporated Rule 346(b) requires that they not only notify their firm, but must also receive its affirmative consent before engaging in the activity.

FINRA declined to go so far as to adopt the Rule 346(b) prior consent requirement, instead promulgating supplementary material imposing stringent review requirements on member firms reviewing associated persons' outside business activity. In response to earlier comments advocating a prior consent requirement, FINRA reasoned that such a requirement was not necessary for all firms and that the proposed rule did not prevent firms from adopting a prior notice and consent rule as a matter of internal policy.¹

A Prior Consent Rule is Necessary to Protect Investors

The Clinic is pleased to see FINRA abandoning NASD Rule 3030's insufficient *prompt* notice standard in favor of a stronger *prior notice* standard. However, we are concerned to see that the Proposed Rule drops the prior *consent* requirement currently in Incorporated NYSE Rule 346(b).

Outside business activities pose significant risks to investors due to monitoring difficulties and the activities' inherent potential for abuse. In light of these risks, we strongly believe that a mere prior notice standard is grossly inadequate to protect investors, and accordingly urge FINRA to amend the Proposed Rule to incorporate an explicit prior consent requirement.

Disciplinary actions frequently involve improper or improperly reported outside business activities, as highlighted in NASD Notice to Members 01-79, *NASD Reminds Members of their Responsibilities Regarding Private Securities Transactions Involving Notes and Other Securities and Outside Business Activities*. Indeed, numerous unscrupulous associated persons have used outside business activities to facilitate broader misconduct, such as misappropriation of client funds. See, e.g., In re Rhonda Lavonne Copenny, NYSE Hearing Board Decision 06-137 (misappropriation through outside real-estate investment); In re Jeffery Arden Wicks, FINRA Case #2009020835601 (misappropriation through purported outside investment).

A prior consent rule has several significant advantages. It eliminates any gap during which associated persons may conduct outside business activities even though their firm has not yet completed its review. Indeed, a prior consent rule ensures firms' ability to properly and completely apply the guidelines present in the Proposed Rule's supplementary material.

¹ See Securities and Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010).

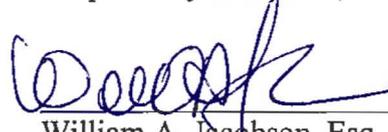
Furthermore, a prior consent rule would reduce the possibility of misunderstandings over whether a notice has been received and reviewed.

Although the Proposed Rule allows firms flexibility to adopt internal prior consent policies should they deem them necessary, and although many firms already do have some form of prior consent policy, we believe that investors would be better served by a bright-line industry-wide prior consent rule. A single, clear standard would reduce the possibility for misunderstandings by member firms and their associated persons about their responsibilities, and would also help investors understand what to expect in this area.

Finally, even among those currently subject to NYSE Rule 346(b), outside business activity violations continue to occur with alarming frequency. Accordingly, we do not agree that the best way to improve investor protection in this area is to weaken the current NYSE standard.

For the foregoing reasons, the Clinic urges the SEC to reconsider its previous approval, and to approve the Proposed Rule only if the Proposed Rule includes a prior consent requirement.

Respectfully submitted,



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