

September 9, 2010

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

Re: File Number SR-FINRA-2010-039 (Proposed Consolidated FINRA Rules
2090 and 2111 – Know Your Customer and Suitability)

Dear Ms. Murphy:

The Securities Arbitration Clinic at St. John's University School of Law (“Clinic”) is very pleased to accept this opportunity to comment on the proposed FINRA rule consolidation concerning suitability and know-your-customer obligations, proposed consolidated Rules 2090 and 2111. The Clinic represents investors on a pro bono basis in FINRA arbitrations against broker-dealers and registered representatives. Clinic clients are generally of modest means and are otherwise unable to obtain alternative legal representation. In addition to investor representation, the Clinic is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing brokers’ obligations to gather information about their customers prior to making investment recommendations, and ensuring that investors are sufficiently protected by the process. While the Clinic generally supports proposed Rules 2090 and 2111 and requests that the SEC approve the proposed rules, the Clinic proposes additional changes to proposed Rule 2111.

The Clinic believes that Rule 2111 (Suitability) could go further and set forth a broker’s duties with more specificity, resulting in broader investor protection. The proposed revision to current NASD Rule 2310’s applicability to recommendations involving a “purchase, sale or exchange of any security” to encompass “recommended transaction[s]” and “investment strateg[ies]” under Rule 2111 is a very positive change. However, the rule should be clear that a broker’s suitability obligations also pertain to recommendations to hold a security. The detriment to an investor is just as great whether an unsuitable recommendation results in a purchase, sale, exchange or retention of a security. The ambiguity as to whether the terms “recommended transaction” or “investment strategy” encompass a recommendation to hold will in all likelihood pose a contentious issue in arbitration cases which is precisely why this should not be left

ambiguous and open to interpretation. Moreover, the rule should also be clear that a broker's suitability obligations pertain to accounts that a client transfers to the broker. A broker's recommendations to a customer should not be made in a vacuum, but rather should be based on numerous criteria as set forth in, and required by, proposed Rule 2111, as well as the security holdings in the customer's account. Thus, a broker's failure to review a customer's account that has been transferred to the broker from a suitability prospective is just as much a violation of their suitability duties as the broker's making an affirmative unsuitable recommendation. Their silence is tantamount to a recommendation to hold the securities.

We ask that the SEC and FINRA consider the additional proposed changes to better protect investors. Thank you for the opportunity to comment on these rule proposals and your consideration of this important matter.

Respectfully,

Lisa A. Catalano
Director, Securities Arbitration Clinic