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Via Electronic Filing

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

RE: File Number SR-FINRA-2011-059; Release Number 34-65645 (Proposed Rule Change to Adopt the New FINRA Rule 3230 on Telemarketing)

Dear Ms. Murphy:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the Proposed Rule Change to Adopt the New Financial Industry Regulatory Authority ("FINRA") Rule 3230 on Telemarketing in the FINRA Consolidated Rulebook ("Proposed Rule"). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment in the largely rural "Southern Tier" region of upstate New York. For more information, please visit http://securities.lawschool.cornell.edu.

On October 13, 2011, FINRA filed with the Securities and Exchange Commission ("SEC") this Proposed Rule.[1] The Proposed Rule adopts NASD Rule 3230, subject to certain changes. The Proposed Rule would also delete NYSE Rule 440A (Telephone Solicitation) and NYSE Rule Interpretation 440A/01. Additionally, the Proposed Rule would adopt provisions that are substantially similar to the telemarketing rules of the Federal Trade Commission ("FTC") pursuant to the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 ("Prevention Act").

The Clinic supports the Proposed Rule because it complies with the Prevention Act, pursuant to which the SEC requested that FINRA and the New York Stock

[1] Notice of Filing of Proposed Rule Change to Adopt New FINRA Rule 3230 (Telemarketing), 76 Fed. Reg. 67,787 (Nov. 2. 2011) *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p125065.pdf.

Exchange ("NYSE") amend their telemarketing rules to require their members to join the national do-not-call registry.[2] The Clinic believes the Proposed Rule is an important step in preventing members from using deceptive and abusive practices when telemarketing. In line with the goals of FINRA Rule 3230, the Clinic offers one suggestion to improve the effectiveness of the Proposed Rule. As set forth below, the Clinic supports the rule but suggests that the Proposed Rule Should incorporate the additional provisions in NYSE Rule 440A regarding prerecorded messages and the use of telephone facsimile or computer advertisements.

NYSE Rule 440A(e) prohibits a member from initiating "any telephone call to any residence using an artificial or prerecorded voice to deliver a message, without the prior express consent of the called person."[3] This provision provides for certain exceptions to this general rule, such as if the call is not made for a commercial purpose or is made to any person with whom the member organization has established a business relationship at the time the call is made. Similarly, Rule 440A(g) prohibits a member from using a "telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device."[4] FINRA asserts that the Proposed Rule should not incorporate these provisions because the FTC did not adopt them under the Prevention Act and thus they are not required to be part of SEC or FINRA rules.[5]

Though Proposed FINRA Rule 3230(k) provides for certain prohibitions against prerecorded messages, these prohibitions would not apply to prerecorded messages permitted for compliance with the "safe harbor" for abandoned calls under proposed subparagraph (j)(2). Additionally, the Proposed Rule does not incorporate any provisions for telephone facsimile or computer advertisements. The Clinic recommends that the Proposed Rule eliminate the "safe harbor" exception and adopt the provisions of Rule 440A for the following two reasons.

First, although the FTC did not adopt these provisions under the Prevention Act, the SEC directed FINRA to review its telemarketing rules and "propose rule amendments that provide protections that are *at least* as strong as those provided by the FTC's telemarketing rules."[6] As set forth in the Rule Proposal, the SEC has suggested that FINRA's rules have generally not "kept pace with the FTC's rules, and thus may no longer meet the standards of the Prevention Act." Thus, FTC's rules clearly serve as the

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[2] 15 U.S.C. 6101-6108.
[3] NYSE Rule 440A(e).
[4] NYSE Rule 440(A)(g).
[5] *See* "Text of the Proposed rule Change" 7, *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124683.pdf.
[6] *See* Letter from Robert W. Cook, Director, Division of trading and Markets, SEC, to Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA, dated May 10, 2011 (emphasis added), cited in footnote 11 to Rule Proposal.

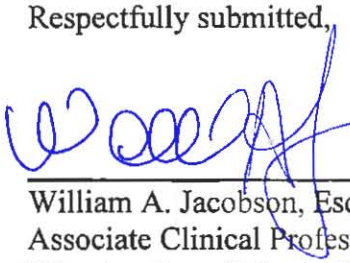
minimum, not the maximum, threshold for FINRA's rules. FINRA should not refrain from incorporating provisions merely because they exceed those of the FTC.

Second, while FINRA asserts that these provisions are duplicative of similar FCC regulations that are applicable to broker-dealers, the Clinic recommends that the provisions should be incorporated into the Proposed Rule because of the vital interests they serve to protect. In the age of modern technology, customers need more, not less, protection against invasive and abusive telemarketing techniques promulgated through modern methods of communication, such as prerecorded telephone messages or advertisements sent by email. By incorporating these provisions into the Proposed Rule, FINRA can enhance their enforcement.

Conclusion

The Clinic appreciates the opportunity to comment on the Proposed FINRA Rule 3230 and hopes that the SEC will consider some of the concerns raised in this comment letter to further the goals of protecting investors in telemarketing.

Respectfully submitted,



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