



Cornell University  
Law School

Lawyers in the Best Sense

**WILLIAM A. JACOBSON**  
*Clinical Professor of Law*

154 Myron Taylor Hall  
Ithaca, New York 14853-4901  
T: 607.255.6293  
F: 607.255.3269  
E: waj24@cornell.edu

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**Via Electronic Filing**

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE.  
Washington, DC 20549-1090

**RE: Release No. 34-73238; File No. SR-FINRA-2014-038 (Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook)**

Dear Mr. Fields:

The Cornell Securities Law Clinic (“Clinic”) submits this comment letter in support of the proposal (“Rule Proposal”) to (1) adopt and add to NASD Rule 3010(e) (Qualifications Investigated) relating to background investigations as FINRA Rule 3110(e) (Responsibility of Member to Investigate Applicants for Registration) in the consolidated FINRA rulebook and (2) add Supplementary Material .15 (Temporary Program to Address Underreported Form U4 Information) to FINRA Rule 3110 (Supervision).

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. For more information, please see: <http://securities.lawschool.cornell.edu>.

NASD Rule 3010(e) provides that a firm must ascertain by investigation “the good character, business repute, qualifications, and experience” of an applicant before the firm applies to register that applicant with FINRA. The rule does not limit the scope of such investigation; rather, the firm must obtain all the necessary information to make an evaluation.

FINRA is proposing to adopt NASD Rule 3010(e) as FINRA Rule 3110(e) with streamlined and clarified rule language. The proposed rule also adds a provision requiring



members to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 days after the form is filed with FINRA.

FINRA is also proposing to add Supplementary Material .15 to FINRA Rule 3110(e). This addition establishes a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 regarding unsatisfied judgments or liens. The stated purpose of this addition is to further incentivize member firms to report information regarding those unsatisfied judgments or liens that are older (more than five years old) and of a less significant amount (less than \$5,000), and thereby lessen the burden on FINRA in contacting firms and requesting such information.

### **I. The Clinic Generally Supports the Rule Proposal**

The Clinic supports the adoption of NASD Rule 3010(e). There is currently no other FINRA rule that requires its member firms to conduct background investigations on applicants.

The Clinic also supports the addition of a provision requiring written procedures for Form U4 verification. Written procedures will enable the member firm to conduct more consistent—and hopefully more thorough—background checks on applicants. An applicant discloses information via the Form U4 to the Central Registration Depository (“CRD”), and the public accesses the information provided to CRD through BrokerCheck. BrokerCheck, however, has not been immune to reporting failures.<sup>1</sup>

Accordingly, written procedures will also allow the public to better monitor whether such investigations are being done appropriately. If the written procedures are inadequate, an applicant is erroneously registered, and private investors are harmed as a result, the harmed investors will be able to point to the written procedures in stating their claims.

Lastly, the Clinic supports the addition of Supplementary Material .15 as a way of further incentivizing member firms to disclose more information on registered persons.

### **II. The Clinic Asks that FINRA Issue a Notice Providing More Guidance on the Proposed Rule's Requirements**

Although the Clinic generally supports the Rule Proposal, the Clinic asks that FINRA issue a Notice providing more guidance on the proposed rule's requirements.

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<sup>1</sup> See, e.g., Jean Eaglesham & Rob Barry, *Stockbrokers Fail to Disclose Red Flags*, WALL ST. J. (Mar. 5, 2014), available at <http://online.wsj.com/news/articles/SB10001424052702304026804579411171593358690> (discussing a *Wall Street Journal* analysis that showed, among other things, more than 1,500 brokers with personal bankruptcy filings and 150 brokers with criminal charges or convictions that were not in their regulatory records).

First, FINRA should clarify how member firms can thoroughly investigate an applicant's good character, business reputation, qualifications, and experience. Although the language of the proposed rule does not limit the scope of investigation,<sup>2</sup> the emphasis on the Form U4 in the new written procedures provision might suggest that it would be enough to review and investigate the information on an applicant's Form U4 (and if applicable, the Form U5 and CFTC Form 8-T). The Form U4 does disclose pertinent information about the applicant, but firms should also consider other sources, such as public social media profiles and online review sites. Guidance on appropriate avenues for thorough investigation would greatly aid members and investors.

Second, the proposed rule states that, at a minimum, a firm's written procedures must provide for a search of "reasonably available public records."<sup>3</sup> The Rule Proposal defines public records as including, but not limited to, "general information, such as name and address of individuals; criminal records; bankruptcy records; civil litigations and judgments; liens; and business records."<sup>4</sup> However, FINRA should also define "reasonably available" to set an objective standard by which a set of written procedures may be measured. This is particularly important because different firms have different resources but it is unlikely that many firms will require more than the minimum effort in verifying information on an applicant's Form U4.

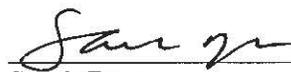
### III. Conclusion

The Clinic appreciates the opportunity to provide our comments to the Commission. For the foregoing reasons, the Clinic generally supports the Rule Proposal while requesting that FINRA issue a Notice to its members.

Respectfully submitted,



William A. Jacobson, Esq.  
Clinical Professor  
Director, Cornell Securities Law Clinic



Sarah Ryu  
Cornell Law School, Class of 2015

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<sup>2</sup> Exhibit 5: Text of Proposed New FINRA Rule 3110(e) at 40–41, *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p600792.pdf>.

<sup>3</sup> *Id.* at 41.

<sup>4</sup> Rule Proposal at 7 n.12, *available at* <http://www.sec.gov/rules/sro/finra/2014/34-73238.pdf>.