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July 21, 2015

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2015-009 (Sales and Offers of Sales of Securities on Military Installations)**

Dear Mr. Fields:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing related to sales and offers of sales of securities on military installations (“the proposal”). The proposal would adopt FINRA Rule 2272 to govern sales and offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.

To comply with the requirements of Section 15A(b)(14) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> the proposal would require that any member engaging in sales or offers of sales of securities on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof clearly and conspicuously disclose in writing, which may be electronic, to such potential investor prior to engaging in sales or offers of sales of securities to such investor: (1) the identity of the member offering the securities; and (2) that the securities offered are not being offered or provided by the member on behalf of the Federal Government, and that the offer of such securities is not sanctioned, recommended or encouraged by the Federal Government.<sup>2</sup>

The proposal would also require that a member satisfy the suitability obligations imposed by FINRA Rule 2111 when making a recommendation on the

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<sup>1</sup> 15 U.S.C. 78o-3(b)(14).

<sup>2</sup> See proposed Rule 2272(b).

premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof.<sup>3</sup>

Finally, the proposal would require that no member cause a person to receive a referral fee or incentive compensation in connection with sales or offers of sales of securities on the premises of a military installation with any member of the U.S. Armed Forces or a dependent thereof, unless such person is an associated person of a registered broker-dealer who is appropriately qualified consistent with FINRA rules, and the payment complies with applicable federal securities laws and FINRA rules.<sup>4</sup>

The Commission published the proposed rule change for public comment in the Federal Register on May 12, 2015.<sup>5</sup> The Commission received four comment letters directed to the filing.<sup>6</sup> One commenter supported the proposal as being thorough and balanced and noted that the proposal is harmonized with definitions in other regulations concerning military installation sales practices.<sup>7</sup> Three commenters supported the proposal but suggested changes to the proposal.<sup>8</sup> The following are FINRA's responses, by topic, to the commenters' concerns.

#### **Application to Offers and Sales of Securities off Premises**

Two commenters supported extending the scope of the proposal to apply to offers and sales of securities to members of the U.S. Armed Forces and their

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<sup>3</sup> See proposed Rule 2272(c).

<sup>4</sup> See proposed Rule 2272(d).

<sup>5</sup> See Securities Exchange Act Release No. 74890 (May 6, 2015), 80 FR 27220 (May 12, 2015) (Notice of Filing of File No. SR-FINRA-2015-009).

<sup>6</sup> See Letter from Jason Robinson, Georgia State University College of Law Investor Advocacy Clinic, to Brent J. Fields, Secretary, SEC, dated May 30, 2015 ("GSU"); letter from Hugh Berkson, Vice President/President-Elect, Public Investors Arbitration Bar Association, to Brent J. Fields, Secretary, SEC, dated June 1, 2015 ("PIABA"); letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, to Brent J. Fields, Secretary, SEC, dated June 2, 2015 ("FSI"); and letter from David M. Rader, Michigan State University College of Law Investor Advocacy Clinic, to Brent J. Fields, Secretary, SEC, dated June 9, 2015 ("MSU").

<sup>7</sup> See FSI.

<sup>8</sup> See GSU, PIABA and MSU.

dependents on or off the premises of a military installation.<sup>9</sup> While offers and sales of securities off the premises of a military installation may present some of the same issues as with offers and sales of securities on the premises of a military installation, FINRA drafted the requirements of the proposal to be consistent with the statutory requirements of the Exchange Act, which apply to offers and sales of securities on the premises of a military installation to members of the U.S. Armed Forces and their dependents.

As noted in the rule filing, FINRA reminds members that any such sales or offers of sales of securities off the premises of a military installation must comply with applicable FINRA rules, including suitability and referral fee requirements. Moreover, while the potential of investor confusion regarding the involvement of the federal government in offering the securities may be reduced for activities occurring off the premises of a military installation, FINRA reminds members that any misleading representation made to a member of the U.S. Armed Forces or a dependent thereof off the premises of a military installation that the securities are being offered or provided on behalf of, or sanctioned, recommended, or encouraged by the federal government would be otherwise prohibited by FINRA rules.

#### **Disclosure**

One commenter stated that the ability of members to conceal the disclosures required by the proposal amongst other documents that customers are given to review before a transaction threatens successful implementation of the proposal. The commenter proposed that FINRA create a standardized disclosure form that includes the elements laid out in the proposal, and that FINRA require the registered representative to sign the form at or before the transaction date attesting that the investment is suitable for the member of the U.S. Armed Forces or his or her dependent.<sup>10</sup>

Because FINRA allows a risk-based approach to documenting compliance with Rule 2111,<sup>11</sup> FINRA does not propose to require that registered representatives attest at or before the transaction date that the investment is suitable for the member of the U.S. Armed Forces or his or her dependent. Furthermore, the proposal requires

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<sup>9</sup> See GSU and PIABA.

<sup>10</sup> See GSU.

<sup>11</sup> See Regulatory Notice 12-25 (May 2012) (stating that, although a firm has a general obligation to evidence compliance with applicable rules, Rule 2111 does not include explicit documentation requirements, except in a situation where a firm determines not to seek certain customer information in the first place).

that the member must make the required disclosure “clearly and conspicuously” and “in writing” prior to engaging in sales or offers of sales. Because the disclosures must be “clearly and conspicuously” provided prior to making an offer or sale, FINRA believes that any potential for investor confusion at the point of sale is reduced.

Another commenter supported expanding the proposal to require that persons associated with a member firm disclose, both verbally and in writing, to members of the U.S. Armed Forces and their dependents: (1) if they served in the U.S. Armed Forces and the status of their discharge from the military; (2) that any former military service does not relate to the financial advice being given; and (3) that a service member should not feel compelled to invest because of the associated person’s former military service. The commenter believes that such a requirement would ensure that service members are not being overly influenced by former service members working as financial advisers.<sup>12</sup>

The commenter notes that veterans with long careers or prestigious assignments may hold influence over current service members and that the military culture creates great deference to veterans. FINRA believes that requiring associated persons of member firms to discuss their military service and discharge status with current members of the U.S. Armed Forces could have the unintentional effect of unduly influencing or pressuring current service members’ investment decisions. As such, FINRA declines to revise the proposal as suggested.

### **Suitability**

One commenter supported imposing additional suitability criteria for investments by members of the U.S. Armed Forces, including requiring an assessment of the service member’s anticipated time remaining at his or her current duty station and the amount of time a service member has remaining on his or her contract with the U.S. Armed Forces.<sup>13</sup> Another commenter supported training for registered representatives concerning the special suitability needs of members of the U.S. Armed Forces, including, at a minimum, issues related to assets in Thrift Savings Plan accounts.<sup>14</sup>

FINRA notes that a recommendation concerning the type of retirement account (*e.g.*, a Thrift Savings Plan account) in which a customer should hold his retirement investments typically involves a recommended securities transaction, and

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<sup>12</sup> See MSU.

<sup>13</sup> See MSU.

<sup>14</sup> See PIABA.

thus is subject to Rule 2111.<sup>15</sup> Pursuant to Rule 2111, a member firm and its registered representatives, in making a recommendation, must consider the customer's investment profile, including the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member firm or registered representative in connection with the recommendation. Thus, FINRA believes that the suitability obligations imposed by Rule 2111 satisfy the commenters' concerns and the statutory requirement that FINRA adopt rules requiring its members to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation to a member of the U.S. Armed Forces or a dependent thereof.

Further, FINRA has previously recommended that member firms train registered representatives concerning retirement savings options and the tax, investment and other implications of the decision.<sup>16</sup>

### **Education**

One commenter stated that FINRA should focus on financial education for members of the U.S. Armed Forces.<sup>17</sup> FINRA supports financial education for members of the U.S. Armed Forces. Since 2006, the FINRA Investor Education Foundation's Military Financial Readiness Program has delivered free, unbiased financial education tools and training to service members, their spouses and on-base financial educators through a variety of programs and public awareness initiatives. This multi-faceted program includes, but is not limited to:

- A comprehensive website—[www.SaveAndInvest.org](http://www.SaveAndInvest.org)—that provides tools and information on a wide range of financial topics, including credit management and duty station changes;
- Moneytopia, a serious e-learning financial simulation game for service members and youth;
- On-the-ground training to support the military's current Personal Financial Management program;

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<sup>15</sup> See Regulatory Notice 13-45 (December 2013).

<sup>16</sup> See Regulatory Notice 13-45 (December 2013).

<sup>17</sup> See PIABA.

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- Providing no-cost access to an online credit management tool, myFICO<sup>®</sup>, to help service members and spouses understand and improve their credit scores; nearly 150,000 FICO<sup>®</sup> scores have been provided;
- Fellowships that allow military spouses to earn a career-enhancing credential (the Accredited Financial Counselor<sup>™</sup> certificate) while providing volunteer financial counseling to the military community; and
- Face-to-face financial education forums at military installations worldwide to motivate families to take responsibility for their financial well-being.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing. If you have any questions, please contact me at [REDACTED], email: [REDACTED]. The fax number of the Office of General Counsel is (202) 728-8264.

Best regards,

/s/ Jeanette Wingler

Jeanette Wingler  
Assistant General Counsel