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**Via E-Mail**

Marcia E. Asquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Notice to Members 09-63  
Proposed Rule Change to Adopt FINRA Rule 3260**

Dear Ms. Asquith,

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the proposed rule change (the "Rule Proposal") to incorporate National Association of Securities Dealers ("NASD") Rule 2510 ("Discretionary Accounts"), with certain amendments, as Financial Industry Regulatory Authority ("FINRA") Rule 3260 ("Discretionary Accounts and Transactions"). The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education on investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

The Clinic supports the Rule Proposal with one modification as discussed below. The Rule Proposal generally improves investor protection by adding additional requirements and layers of compliance in members' exercise of discretion over customer accounts and transactions. The Clinic, however, believes that the definition of "normal trading session" should be further clarified.

The Rule Proposal seeks to adopt and clarify most of NASD Rule 2510's requirements regarding transactions by and the discretionary activities of members and their associated persons and customer agents. Additional amendments to the Rule Proposal include: (1) amending Rule 2510(a), which prohibits members and their agents from effecting excessive transactions in customer accounts, to include all associated persons of a member, not just agents, employees and registered representatives; (2) adding the requirement that members obtain a customer's "dated" prior authorization to identify the date such authorization was granted; (3) proposing that members may exercise time or price discretion provided by a customer during a

normal trading session; or time or price discretion provided by a customer after the close of a normal trading session; and (4) proposing that members preserve customers' prior written authorizations and all other applicable records and agreements for at least six years after the date these documents, records, or agreements are uploaded, or alternatively, for at least six years after the date the account is closed.

### **1. The Clinic Supports Numerous Aspects of the Rule Proposal**

The Clinic supports the following substantive aspects of the Rule Proposal, which individually and collectively make it less likely that discretion would be exercised without prior written authorization and appropriate supervision:

- The change in wording to apply the rule to all associated persons of a member, not only to a member, its agents and employees;
- The requirement that a customer's written authorization be provided to a named, natural person;
- The requirement that the customer's written authorization to a member be dated;
- The requirement that a discretionary account be accepted in writing by a designated partner, officer or manager of a member indicating that the account has been accepted pursuant to the member's policies and procedures; and
- The requirement that the designated partner, officer or manager approving the discretionary orders and reviewing such accounts must be someone other than the person vested with the discretionary power.

### **2. The Clinic Suggests Clarification of "Normal Trading Session"**

While the Clinic generally supports the Rule Proposal, we believe that the definition of "normal trading session" is unclear. As proposed, the rule reads: "members may exercise: (1) time or price discretion given by a customer during a normal trading session, provided that such discretion is only valid during that session; or (2) time or price discretion given by a customer after the close of a normal trading session, provided that such discretion is only valid during the next normal trading session."

The Clinic notes that the definition of a "normal trading session" is vague and can lead to confusion. For example, it is not clear if a "normal trading session" includes after-hours trading or if it applies to trades executed on markets overseas. It also is unclear how this term would apply to a customer located overseas at the time of the verbal authorization, where the time zone may be several hours or tens of hours different from New York. The Clinic, therefore, recommends that FINRA more clearly define the term "normal trading session" in the Rule Proposal.

### **3. The Clinic Supports the Six Year Records Retention Proposal**

The Clinic supports the requirement that customers' written authorizations and

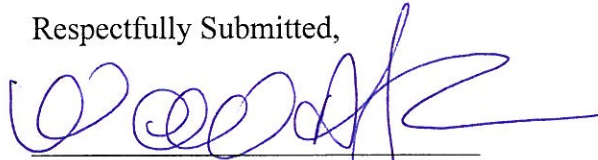
records be preserved for at least six years after the date that such records are either updated or, if there are no updates, when the account is closed. This is in keeping with the FINRA Code of Arbitration Procedure which makes claims eligible for submission to arbitration for up to six years after the occurrence giving rise to the claim. *See* FINRA customer Code of Arbitration Procedure, Rule 12206(a).

It is not unusual for aggrieved investors to file an arbitration claim several years after the events which gave rise to their losses. When this happens, it is paramount that investors and their attorneys have access to vital information to litigate the claim. Moreover, in the age of electronic storage, there should be little argument over retaining the documents. Whereas document retention rules may have once posed a burden in terms of warehouse space, electronic storage space is a near-zero cost. Accordingly, lengthening the time period to at least six years is not only reasonable, but it would also protect investors in their future FINRA arbitration proceedings.

**Conclusion**

The Clinic generally supports the Rule Proposal because the amendments protect investors by adding additional layers of security as to the exercise of discretion. However, the Clinic believes that further clarification is necessary regarding the term “normal trading session.”

Respectfully Submitted,



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