



Cornell Law School

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**(Via E-mail: [pubcom@finra.org](mailto:pubcom@finra.org))**

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 18-13 (Quantitative Suitability)**

Dear Ms. Mitchell,

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to provide feedback on the request for comment (the "Request" or the "Notice") of the Financial Industry Regulatory Authority ("FINRA") on Proposed Amendments to the Quantitative Suitability Obligation Under FINRA Rule 2111. 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://www.securities.lawschool.cornell.edu/>

For the reasons set forth below, the Clinic strongly supports the Proposed Amendments to Rule 2111, which would eliminate the requirement that a customer prove the member or associated person had actual or de facto control over the customer's account.

FINRA Rule 2111 requires members and associated persons who recommend a transaction or investment strategy to have a reasonable basis to believe that (1) the recommended investment is suitable for at least some advisors; (2) the recommended investment is suitable for a particular customer based upon that customer's investment profile; and (3) when the member or associated person has actual or de facto control over a customer account, that a series of recommended transactions, even if suitable in isolation, are not excessive and unsuitable when taken together in light of the customer's investment profile.

Currently, under FINRA Rule 2111, Supplementary Material .05(c), in order to prove that a member or associated person violated the quantitative suitability obligation, a customer must show that (1) the member or associated person had actual or de facto control over the customer's account; and (2) a series of recommended transactions were (3) excessive and unsuitable when taken together in light of the customer's investment profile.



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Page 2

The Proposed Amendments to Rule 2111, which eliminate the requirement that a customer prove that the member or associated person had actual or de facto control over the customer's account will (1) protect investors by deterring unscrupulous associated persons from engaging in excessive trading; and (2) ensure that the culpability for excessive trading rests with the appropriate party. We agree with the justification for these changes set forth at pages 2-3 of the Notice.

Culpability for excessive trading will continue to rest with the appropriate party under the Proposed Amendments. Members and associated persons would not be responsible for a violation of the quantitative suitability rule unless they undertook an affirmative step to recommend an unsuitable series of transactions. Requiring members and associated persons to prove that a transaction was not recommended would deter those individuals from recommending a series of individually suitable transactions at the customer's expense.

### **Conclusion**

The Clinic strongly supports the Proposed Amendments to the quantitative suitability obligation.

Respectfully Submitted,

*//William A. Jacobson//*

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*//Joshua N. Shinbrot//*

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