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November 18, 2009

**Via Electronic Filing**

Marcia E. Asquith  
Senior Vice President and Corporate Secretary  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1500

**RE: Regulatory Notice 09-55 (Communications with the Public)**

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the proposed new FINRA rules regarding communications between firms and the public (the "Rule Proposal") pursuant to Regulatory Notice 09-55. 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>.

The Rule Proposal appears to simplify and streamline NASD Rules 2210 and 2211, and NYSE Rule 472, which currently govern communications between firms and the public. Under the existing rules, communications are divided into six categories, and each category is subject to its own approval, filing, and content standards. The proposed revisions: (1) decrease the types of communications to three categories; (2) set forth new approval and recordkeeping requirements; (3) broaden the filing requirements; and (4) tailor the content standards to apply to more types of communications, while limiting disclosure requirements.

The Clinic generally supports the Rule Proposal, subject to certain modifications. The Clinic believes that the rules governing communications must be further expanded to account for the fairly uncharted terrain of electronic social networking sites, like Facebook or Twitter, and text messaging. Without additional safeguards pertaining to these modes of communication, the public will not be sufficiently protected. The Clinic also believes that the Rule Proposal decreases public protection in a few respects. Specifically, the Clinic opposes limiting disclosure requirements only to members and associated persons able to

affect the content of the communication. We also oppose amending the date from which a firm's retail communications with the public will be subject to a one-year monitoring period.

The Clinic believes, however, that overall, the Rule Proposal reflects an awareness of the changing nature of communications. We feel that investors and the public will be better protected, due to the broad nature of the new categories, which will allow more communications to fall within their purview. The Rule Proposal also appears to facilitate firms' compliance with FINRA rules governing communications, because it eliminates distinctions between similar classes of communications.

**1. The Clinic Suggests FINRA Address Emerging Modes of Communication Including Social Networking Sites and Text Messaging**

While the Clinic generally supports the Rule Proposal, we believe that it should explicitly account for communications between firms and the public made via social networking sites, like Facebook, Twitter, and LinkedIn, as well as through text messaging. Commentators have noted that financial advisers often feel uncertain about the appropriate way to use these new modes of communication to communicate with investors and the public.<sup>1</sup> We believe that FINRA should take this opportunity to promulgate rules relating specifically to social networking sites and text messaging.

It is our understanding, based on FINRA's podcast regarding social networking sites,<sup>2</sup> that social networking sites are treated as a hybrid form of communication. The hybrid nature makes compliance under the Rule Proposal complicated. It is the Clinic's understanding that much of the activity that occurs on these sites, such as posting comments, will be treated as Public Appearances. While the Clinic supports amendments that subject Public Appearances to regulations applicable to other forms of communication, we suggest that additional rules be promulgated to provide firms with clear and explicit guidelines on how to monitor these sites and similar communications.

Further, the current rules leave much of the regulation of social networking sites and text messaging to firms' compliance departments. These modes pose unique problems for monitoring communications. In many cases, communications (and, on many sites, entire accounts) can be purged and their content lost forever. Firms need guidelines to ensure industry-wide consistent use of these modes. We suggest that additional amendments specifying record-keeping requirements be made to ensure that investors and the public are adequately protected. If such amendments cannot be made, we suggest that FINRA prohibit firms and associated persons from using these modes of communications to communicate with the public.

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<sup>1</sup> David B. Janowski, *Advisers, Make Your Voices Heard on FINRA Regulation of Social Media*, INVESTMENT NEWS, October 16, 2009.

<sup>2</sup> FINRA, *Electronic Communications: Social Networking Web Sites*, available at <http://www.finra.org/Industry/Issues/Advertising/p006118>.

**2. The Clinic Opposes Proposed Amendments to Disclosure Requirements in Proposed Rule 2210(d)(7)(ii)**

The Clinic opposes the amendments to disclosure requirements in Proposed Rule 2210(d)(7)(ii). This rule requires that only members or associated persons “with the ability to influence the communication” disclose financial interests in a security discussed in the communication. Under existing Rule IM-2210-1(6)(A)(ii), disclosure is required if either the firm or its officers or partners has a financial interest in a security recommended in the communication.

The Clinic believes that the phrase, “ability to influence,” is too vague and may result in insufficient disclosure. For example, a member or associated person who owns a financial interest in a security might not have an actual ability to influence the communication, in the sense that she is responsible for writing or editing the communication. But, she might exert influence, either intentionally or inadvertently, over someone who does have the ability to influence the communication, even if she is not a direct supervisor. Thus, a person could wield indirect influence over the communication, which might affect its content. While this Proposed Rule no doubt seeks to decrease the burden on firms to disclose, its current form is too vague to adequately protect the public.

**3. The Clinic Opposes the Amendment That Begins the One-Year Filing Period When the Firm Registers with FINRA**

The Clinic opposes Proposed Rule 2210(c)(1)(A), which begins the one-year filing period from the time the firm registers with FINRA. While the Clinic supports the extension of the Proposed Rule 2210(c)(1)(A) to apply to all retail communications, and not only advertisements, we oppose the date from which the one-year period begins to run. Existing Rule 2210(4) imposes a one-year filing requirement on firms that have not previously filed advertisements with FINRA. The one-year period runs from the time the firm files its first advertisement with FINRA. Proposed Rule 2210(c)(1)(A) amends the rule so that the one-year period begins to run from the date the firm registers with FINRA.

The Clinic opposes this amendment because it will likely decrease the amount of time that a new firm’s retail communications will be monitored. For example, a firm might register with FINRA and not begin conducting business until some period after registration. At best, this amendment seems likely to result in a new firm’s retail communications being monitored for a significantly shorter period of time. This amendment seems to run contrary to the aims of the other amendments to 2210, which provide additional protection to investors and the public.

**4. The Clinic Supports Grouping Communications into Three Categories**

The Clinic supports the Rule Proposal's grouping communications into three categories instead of six. This amendment seems to reflect the ways in which the modern firm communicates with investors and the public. The reorganization appears to be aimed at achieving the effective regulation of communications while facilitating firms' ability to comply with FINRA standards. Additionally, it appears as though investors and the public will gain more protection by the broad nature of these categories. There will likely be few communications that will not fall into one of these categories, with the possible exception of electronic communications addressed above. Further these categories are flexible enough to adapt to many, although not all, modes of modern communication, and suggest a forward-looking approach to dealing with communications.

**5. The Clinic Supports Amendments That Extend Monitoring and Increase Disclosure Requirements**

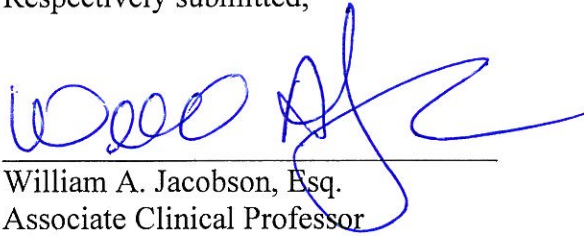
The Clinic supports Proposed Rules 2210(c)(2) and 2210(c)(3), which expand the categories of communications that must be monitored. These amendments will likely afford more protection to investors and the public without unduly burdening firms. By applying the pre-use filing requirement to additional categories of communications, Proposed Rule 2210(c)(2) guards against firm misrepresentation and makes it more likely that investors will be accurately informed about investments. Proposed Rule 2210(c)(3)(A) will further protect investors by requiring firms to file retail communications concerning closed-end funds after the IPO period. Overall, these proposed amendments appear to be focused on providing investors with information that will allow them to make informed decisions.

Additionally, Proposed Rules 2210(d)(3) and 2210(d)(4)(C), dealing with disclosure of firms' names and tax-deferral respectively, appear to be aimed at achieving transparency. These amendments appear likely to provide investors with information that is important and relevant to their investments.

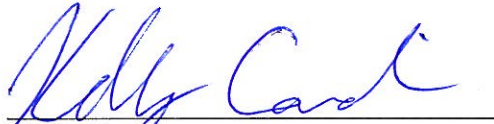
**Conclusion**

The Clinic greatly appreciates the opportunity to comment on this Rule Proposal. While generally supporting the proposal, the Clinic suggests that the rules be further amended to encompass emerging technological media, such as social networking sites and text messaging. Additionally, the Clinic opposes amendments that appear likely to decrease public protection, such as limiting disclosure requirements and decreasing the time period during which a new firm's retail communications will be monitored. Overall, the Clinic believes that the Rule Proposal will benefit firms and investors alike, while increasing transparency between the industry and the public.

Respectively submitted,



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