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

September 24, 2013

Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: Release No. 34-70272; File No. SR-FINRA-2013-035 (Proposed Rule Change Relating To Permissible Use of Customers' Securities)

Dear Ms. Murphy:

The Cornell Securities Law Clinic (the "Clinic") submits this comment letter with regard to proposed rule changes (the "Rule Proposal") to adopt Rules 4314 (Securities Loans and Borrowings), 4330 (Customer Protection—Permissible Use of Customers' Securities), and 4340 (Callable Securities) in the Consolidated FINRA Rulebook. 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 informaion, please see http://securities.lawschool.cornell.edu.

As set forth below, we support the proposed changes to subsections of Rule 4330: 4330(a) and 4330(b)(2)(A)–(B). We express no view on the other proposed changes.

The lending and borrowing of securities in margin accounts are governed by NASD Rule 2330 (Customers' Securities or Funds) and NYSE Rule 402 (Customer Protection – Reserves and Custody of Securities). Now, through the Rule Proposal, FINRA seeks to consolidate these rules and add new requirements for securities lending transactions. In particular, the proposed Rule 4330 continues the written authorization requirement, enhances the suitability requirement, and adds new disclosure requirements.

The Clinic supports the Rule Proposal because the inherently complex nature and high risks associated with margin accounts warrant additional layers of customer protection.

I. The Clinic Supports Continuation Of The Written Authorization Requirement

FINRA proposes to retain the requirement that a brokerage firm obtain a customer's written authorization prior to lending the customer's margin securities. Furthermore, proposed Supplementary Material .02 codifies the requirement that margin agreements and/or loan consents contain a legend in bold type face above the signature line substantially stating: "By Signing this Agreement I Acknowledge that My Securities May be Loaned to You or Loaned Out to Others." The Clinic supports this continuation of the written authorization requirement because it will alert customers about use of their margin securities and pertinent risks.

II. The Clinic Supports The Enhanced Suitability Requirement

In addition to the general suitability requirement in FINRA Rule 2111 (Suitability), FINRA proposes to adopt a provision that specifically addresses the suitability of securities lending transactions. Rule 4330(b)(2)(A) would require a broker-dealer that borrows a customer's margin securities to determine, prior to such agreement, if the type of agreement is suitable for the customer. In making this determination, the broker-dealer must exercise reasonable diligence to assess the customer's unique financial situation and needs, investment objectives, risk tolerance, liquidity needs, and any such pertinent information.

The Clinic welcomes this enhanced suitability requirement because, as the Rule Proposal illustrates, securities lending transactions often present additional risks to customers. These heightened risks call for greater attention to the issue of suitability and also justify putting the burden to determine suitability on brokerage firms. Therefore, we believe that the enhanced suitability requirement under Rule 4330(b)(2)(A) will provide additional customer protection.

III. The Clinic Supports The Additional Disclosure Requirement

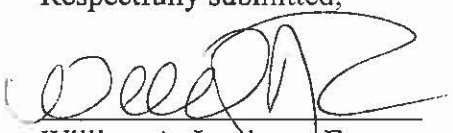
This subsection would require brokerage firms to disclose in writing certain information regarding the rights, risks, and financial impact associated with securities lending transactions prior to entering into such transaciton. Brokerage firms must disclose that the customer's investment proceeds are not protected under the Securities Investor Protection Act of 1970. In addition, subsection (ii) of the Rule 4330(b)(2)(B) further elaborates some of the items subject to disclosure.

The Clinic supports this disclosure requirement because it will alert customers regarding their rights in their securities in margin accounts and further help them assess the risks and financial impact associated with securities lending transactions. We believe that this rule will aid individual customers in making more informed investment decisions.

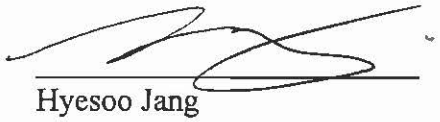
Conclusion

For the foregoing reasons, the Clinic supports the Rule Proposal.

Respectfully submitted,



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



Hyesoo Jang
Cornell Law School, Class of 2015