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Via Electronic Filing

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

RE: Release No. 34–71786; File No. SR–FINRA–2014–010 (Proposed Rule Change to Adopt FINRA Rule 2243 – Disclosure and Reporting Obligations Related to Recruitment Practices)

Dear Secretary Murphy:

The Cornell Securities Law Clinic (the "Clinic") submits this comment to support the proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") to adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices). 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.

Although the Clinic details its reservations below, the Clinic supports the Rule Proposal.

FINRA members often offer compensation packages when recruiting registered representatives ("representatives") to their firms. Implicit in these recruitment efforts is an expectation that many of the representative's former customers will transfer assets to the FINRA member recruiting the representative (''recruiting firm''). Representatives, who contact former customers to join them at their new firm, often do not inform the former customers about these recruitment compensation packages. Thus, the Clinic believes that the Rule Proposal is an important step in fostering investor protection by requiring recruiting firms to disclose potential material conflicts of interest that arise in connection with a representative's receipt of an enhanced compensation package.

In January 2013, FINRA Regulatory Notice 13-02 requested comment on a proposed rule ("Initial Rule Proposal") to require disclosure of material conflicts of interests relating to recruitment compensation packages.[1] On March 1, 2013, the Clinic responded to this request and generally supported the Initial Rule Proposal because the disclosure of potential material conflicts of interests provides clients with the requisite information to adequately ensure that the management of their investment accounts is not being improperly motivated by the allure of an enhanced compensation package.[2]

The Clinic now provides the following comments in response to FINRA's proposed adoption of the Rule Proposal:

(1) <u>Explaining Potential Material Conflicts in Plain and Concise English</u>.

When representatives seek an enhanced compensation package, a potential material conflict often arises because this compensation requires hitting increased commission targets, which motivate representatives to engage in commission-generating trading activity. This trading activity, however, is not necessarily in the client's best interest. Unfortunately, the current Rule Proposal does not clearly explain that a representative's enhanced compensation is often directly determined by the amount of commissions generated during the representative's last twelve months at his or her old firm. In order to ensure adequate disclosure, the Clinic believes that the Rule Proposal should require a broker-dealer to explain this potential material conflict to customers in plain and concise English.

As proposed in our prior comment, the Clinic again suggests that FINRA should also require written client acknowledgement of disclosure in order to assure that the customer clearly understands this potential material conflict.[3] The Clinic also believes that this acknowledgement form should be written in plan and concise English. Further, the Clinic still believes that requiring written acknowledgement will not prove overly burdensome.[4] Recruiting firms can standardize the acknowledgement form and include the form with the new account paperwork that a client already has to sign in order to transfer his or her accounts.

(2) <u>Broadening Disclosure to Both New and Former Customers</u>.

As proposed in our prior comment, the Clinic again suggests that the Rule Proposal can be improved by requiring disclosure to the representative's new customers in addition to former customers. Among other things, the Rule Proposal provides two key benefits to customers: (1)

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[1] Recruitment Compensation Practices, Reg. Notice 13-02 (January 2013), *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p197599.pdf.
[2] Cornell Law School Comment Letter, *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p458588.pdf (pages 273–76).
[3] Cornell Law School Comment Letter, *supra* note 2 at 275.
[4] *Id.*

customers have more power in negotiating fees after learning that a representative may have received a recruitment compensation package; and (2) customers can better determine whether following a representative to a new recruiting firm is actually in the customers' best interests.

The Clinic finds no reason why only former customers should receive these benefits. Enhanced compensation is not based on any distinction between existing and new business. In fact, enhanced compensation can also pressure recently transferred representatives to drive up transactions with new customers in order to justify their compensation. This pressure may arguably be greater with new clients because there is no established relationship between the two parties.[5]

(3) Broadening Disclosure to Both New and Old Firms.

Further, the Clinic believes that both the new and old recruiting firms should be required to disclose enhanced compensation packages. As discussed earlier, a representative's enhanced compensation may depend on how many clients the representative recruits to the new firm; however, representatives at the old firm often also receive compensation for how many clients remain behind. The Rule Proposal, in effect, allows the old firm to remain silent about the very same potential material conflict about which the new firm must disclose. The Clinic believes that this difference in treatment between the new and old firm is inconsistent and must be addressed.

(4) Adopting the $50,000 De Minimus Exception.

The Rule Proposal will exempt compensation that does not meet a $100,000 threshold for each of aggregate upfront payments and aggregate potential future payments; however, the Clinic believes that the Initial Rule Proposal's $50,000 threshold should be adopted. FINRA acknowledges that only the largest firms offer recruitment compensation packages that take them out of the $100,000 de minimus exception. The disclosure obligation, however, should also encompass small and mid-tier broker-dealers, even where the costs of compliance would be relatively more burdensome.

The Clinic believes that compensation packages under $100,000 still have the potential to incentivize representatives of smaller broker-dealers to perform back-end transactions that aren't necessarily for a customer's benefit. The Clinic does not believe that the broker-dealer's increased administrative costs in tracking this recruitment compensation outweighs the investor protection benefits of increased transparency to inform former customers about recruitment compensation.

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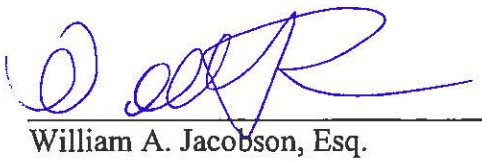
[5] Cornell Law School Comment Letter, *supra* note 2 at 276.

Conclusion

For the foregoing reasons, the Clinic appreciates the opportunity to comment on FINRA's Rule Proposal.

Respectfully submitted,



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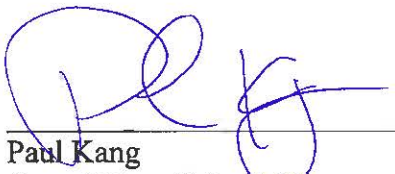

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