Folio Investing

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VIA ELECTRONIC DELIVERY (rule-comments@sec.gov)

September 4, 2015

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: File No. SR-FINRA-2015-029; Release No. 34-75655
Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook

Dear Mr. Errett:

FOLIO*fn* Investments, Inc. ("Folio" or the "Firm") welcomes the opportunity to express its views on the Financial Industry Regulatory Authority's ("FINRA") proposal to adopt FINRA Rule 3210 ("Proposed Rule") outlined in Securities Exchange Act Release No. 75655 (the "Release") as part of the Consolidated FINRA Rulebook and to delete NASD Rule 3050, NYSE Rules 407 and 407A, and NYSE Rule Interpretations 407/1 and 407/2.

I. Access to Account

Folio supports the Proposed Rule, its modernized approach in considering technological advancements and efficiencies in the industry, and particularly its flexibility as to how "duplicate copies of confirmations and statements, or the transactional data contained therein" should be provided to employer firms. However, we think, as written, Proposed Rule 3210(c) unintentionally restricts the various ways by which employer firms can have access to the transactional data. As commenters to FINRA Regulatory Notice 09-22 have noted, firms gather and review trading information in a variety of ways. Some receive electronic feeds of data, while others have electronic access to account statements and trade confirmations through the executing firm's website. Just as there is no need to limit the flexibility of the form the data takes, there is also no need to limit the flexibility by which the data can be provided or made available to the employer firm. Because of technological diversification among firms, FINRA should not prescribe that the transactional data be specifically "transmitted" to the employer firm as Proposed rule 3210(c) currently does, but leave it up to the executing firm to decide, in considering its business model and technical sophistication, how to best make available the information, which could include providing the employer firm with view-only access directly to an associated person's account, provide data in a real time widget, or through other means that would better advance the goal of the Proposed Rule.

II. Beneficial Interest – Spousal Account

The Proposed Rule and Supplementary Material .02 presume beneficial interest in any account that is held by the spouse of the associated person. We believe this presumption is overly broad and would apply the proposed rule requirements to accounts over which the associated person has no control and, thus, would have no ability to engage in insider trading or other manipulative practices. As stated in the Release, the "purposes of NASD Rule 3050 and NYSE Rule 407, is designed to enable members to monitor the *personal* accounts of their associated persons opened or established outside of the member firm". (Emphasis added.) The current proposal assumes that marriage equates to control or to common property, which is not an accurate presumption at all, and perhaps not even in most or many instances. Marriage should not be the determinative factor for establishing beneficial interest. Modern families have dynamic living arrangements, some married but living separate while others going through a divorce but remain living together. The same issues apply to the accounts of, for example, the child of a person who is currently still an employee's spouse. The proposed changes should be tailored to address the Proposed Rule's concerns – namely, the provisions should apply only when and if an associated person has control over an account.

This approach would hold the associated person responsible for accurately reporting the accounts he or she has knowledge and control over and would not impose on the spouse (or their child's account) – where the employee has no control -- a disclosure obligation in contravention of the spouse (or their child's) privacy and autonomy. In fact, if control does not exist – the employee may simply have no means to ensure compliance with the rule.

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We appreciate this opportunity to submit our comments on FINRA's Proposed Rule. If you should have any questions or would like to discuss our comments, please do not hesitate to contact me at [redacted] or [redacted] or Erica A. Green at [redacted] or [redacted]

Sincerely,

Michael J. Hogan
President and Chief Executive Officer