

Faculty Supervisors

JONATHAN BROWN
DAVID N. DORFMAN
MARGARET M. FLINT
ROBIN FRANKEL
ELISSA GERMAINE
THOMAS MCDONNELL
VANESSA MERTON
JASON PARKIN

JOHN JAY LEGAL SERVICES, INC.

ELISABETH HAUB SCHOOL OF LAW
80 NORTH BROADWAY
WHITE PLAINS, NY 10603
TEL 914-422-4333
FAX 914-422-4391
JJLS@LAW.PACE.EDU

Executive Director

MARGARET M. FLINT

Clinic Administrator

ROBERT WALKER

Staff

MIGUEL SANCHEZ ROBLES
BRENDA THORNTON

June 19, 2018

VIA EMAIL

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

Re: FINRA Regulatory Notice 18-13, Proposed Amendments to the Quantitative Suitability Obligation Under FINRA Rule 2111

Dear Ms. Mitchell:

The Investor Rights Clinic at the Elisabeth Haub School of Law at Pace University, operating through John Jay Legal Services, Inc. (PIRC),¹ welcomes the opportunity to comment on FINRA's proposal to amend the quantitative suitability obligation under Rule 2111. Specifically, FINRA proposes removing the element of control that currently must be proved to demonstrate a violation, but would still require a showing that the transactions were recommended and that the level of trading was excessive and unsuitable in light of the customer's investment profile. PIRC supports the proposed amendments as they aim to more effectively address instances of excessive trading in customers' accounts by alleviating the burden of proving an unnecessary element to succeed in a claim.

Currently, under the quantitative suitability obligation, control can be actual or de facto. While actual control exists when a broker has formal discretionary authority over a customer's account, a showing of de facto control generally depends on whether the customer routinely follows the broker's advice due to the customer's inability to evaluate the broker's recommendations and exercise independent judgment. PIRC agrees with FINRA that these assessments place a heavy and unnecessary burden on customers. The proposed amendments

¹ PIRC opened in 1997 as the nation's first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

eliminate the control element while reinforcing the recommendation element of quantitative suitability, thereby ensuring that culpability for excessive trading rests with the appropriate party. Thus, PIRC agrees with FINRA that the proposed amendments will eliminate an unwarranted defense for brokers, resulting in increased investor protection and accountability for wrongdoers.

Respectfully submitted,

Pace Investor Rights Clinic

Matla Garcia Chavolla
Student Intern, PIRC

Elissa Germaine
Director, PIRC