



June 12, 2018

By electronic mail to pubcom@finra.org.

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

Re: FINRA Regulatory Notice 18-13 – Quantitative Suitability

Dear Ms. Piorko Mitchell:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am submitting this letter in support of FINRA Regulatory Notice 18-13 (the “Proposal”) regarding quantitative suitability obligations.² We believe the Proposal is good for investors because it aligns the evidentiary standard in excessive trading (or “churning”) cases within the suitability standard of care owed to customers.

NASAA has a considerable interest in FINRA rulemaking because our members regulate FINRA member firms and their associated persons. In our view, the Proposal takes a reasonable and effective approach to improve FINRA Rule 2111 by clarifying broker-dealers’ obligations regarding quantitative suitability. We accordingly support the Proposal and encourage its adoption.³

Striking the requirement that a broker-dealer have actual or de facto control over a customer account for the broker-dealer to be potentially liable for churning enhances investor protection in two ways. First, it removes a qualitative element from this otherwise quantitative obligation.

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as a forum for these regulators to work with each other to protect investors at the grassroots level and promote fair and open capital markets.

² See FINRA Regulatory Notice 18-13, *Quantitative Suitability – FINRA Requests Comment on Proposed Amendments to the Quantitative Suitability Obligation Under FINRA Rule 2111* (Apr. 20, 2018), available at <http://www.finra.org/industry/notices/18-13>.

³ Please note that our support for the Proposal should not necessarily be construed as support for, or opposition to, Regulation Best Interest (“Reg. BI”), as NASAA has not yet taken a position on Reg. BI or the standards of care proposed therein. NASAA is commenting on the Proposal within the context of existing suitability standards.

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Amending this requirement to a fully quantitative analysis will provide a more effective framework for FINRA members to supervise their associated persons. In turn, such close supervision should prevent excessive trading of customer accounts. For this issue, FINRA members should focus their compliance attention on appropriate quantitative metrics – *e.g.*, turnover rates, cost-to-equity ratios and in-and-out trading – when looking for excessive trading, not splitting hairs trying to assess imprecise issues related to the amount of control over a customer’s account.

Second, the Proposal provides a greater likelihood that harmed customers in arbitration proceedings or FINRA enforcement staff in disciplinary actions will be able to recover against bad brokers. Considering that litigants will no longer be required to proffer qualitative evidence of control to establish a prima facie case of excessive trading, these cases will be decided on their quantitative merits. This will deter unscrupulous brokers from engaging in excessive trading because they will no longer be able to escape liability by simply minimizing the appearance of control. Furthermore, the original need for a control element in a churning analysis has been obviated by the incorporation of quantitative suitability into Rule 2111’s overall suitability framework. The recommendation element inherent in Rule 2111 will protect broker-dealers from spurious churning claims. NASAA accordingly agrees with the rationale for the rule amendments set forth in the Proposal.

NASAA appreciates the opportunity to submit its comments in connection with this matter and welcomes the opportunity for further discussion. If you have any questions about this letter, please contact NASAA’s Broker-Dealer Section Chair, Frank Berger-Gilligan (frank.berger-gilligan@tn.gov or 615-532-2375), or General Counsel, A. Valerie Mirko (vm@nasaa.org or 202-737-0900).

Sincerely,

A handwritten signature in black ink, appearing to read "J.P. Borg". The signature is stylized and written in a cursive-like font.

Joseph P. Borg
NASAA President
Director, Alabama Securities Commission