

VIA ELECTRONIC MAIL

December 14, 2010

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

RE: File Number SR-FINRA-2010-039 – Notice of Filing of Amendment No. 1 to a Proposed Rule Change and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

Dear Ms. Murphy:

On September 21, 2010, the Financial Industry Regulatory Authority (FINRA) responded to comments, and filed Amendment No. 1 to its proposed adoption of Rule 2090 (Suitability Rule) and Rule 2111 (Know Your Customer Rule) as part of the Consolidate Rulebook (collectively, the Proposed Rules).¹ On November 17, 2010, the Securities and Exchange Commission (SEC) published its approval of the Proposed Rules and solicited final comments.

As written, the Proposed Rules would combine the terms of NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405, addressing know-your-customer obligations, into a single rule as part of the Consolidated FINRA Rulebook and replace the existing NYSE and NASD Rules and related interpretative material.² In addition, the Proposed Rules would codify various interpretations regarding the scope of the suitability rule, clarify the information to be gathered and considered as part of a suitability analysis, and create an exemption for recommended transactions involving institutional customers, subject to specified conditions.

The Financial Services Institute (FSI)³ welcomes this opportunity to comment on the Proposed Rules. FSI previously submitted comment letters in response to FINRA Regulatory Notice 09-25⁴

¹ Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook SEC Release NO. 34-62718, available at

<http://edocket.access.gpo.gov/2010/pdf/2010-20537.pdf>. A copy of FSI's comment letter can be viewed at

<http://www.finra.org/web/groups/industry/@ip/@req/@notice/documents/noticcomments/p119308.pdf>.
² The proposed rule change would delete NASD Rule 2310, IM-2310-1 (Possible Application of SEC Rules 15g-1 through 15g-9), IM-2310-2 (Fair Dealing with Customers), IM-2310-3 (Suitability Obligations to Institutional Customers), NYSE Rule 405(1) through (3) (including NYSE Supplementary Material 405.10 through .30), and NYSE Rule Interpretations 405/01 through/04.

³ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 126 Broker-Dealer member firms that have more than 188,000 affiliated registered representatives serving more than 15 million American households. FSI also has more than 14,500 Financial Advisor members.

⁴ A copy of the Notice can be viewed at

<http://www.finra.org/web/groups/industry/@ip/@req/@notice/documents/notices/p118709.pdf>.

and the original publication of the Rule Proposals in the Federal Register.⁵ We are pleased that FINRA addressed many of the concerns we raised in these comment letters. Specifically, we note that FINRA amended the Proposed Rules to eliminate provisions that would have expanded the suitability requirements to non-security investment products and suitability review to include an examination of information known to the broker-dealer.

Despite these improvements, we remain concerned with the timing of the adoption of the Proposed Rules. This concern is addressed in detail below.

Background on FSI Members

FSI represents independent broker-dealers (IBD) and the independent financial advisors that affiliate with them. The IBD community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 financial advisors – or 64% percent of all practicing registered representatives – operate as self-employed independent contractors, rather than employees, of their affiliated broker-dealer firm.⁶ These financial advisors are self-employed independent contractors, rather than employees of the IBD firms. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁷ Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI's mission is to ensure our members

⁵ See Exchange Act Release No. 62718 (August 13, 2010), 75 FR 51310 (August 19, 2010). This release was later amended to correct footnote cross-references. Exchange Act Release No. 62718A (August 20, 2010), 75 FR 52562 (August 26, 2010). A copy of FSI's comment letter can be viewed at <http://sec.gov/comments/sr-finra-2010-039/finra2010039-21.pdf>.

⁶ Cerulli Associates at <http://www.cerulli.com/>.

⁷ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments on the Proposed Rule

As stated above, FSI remains concerned that the Proposed Rules are being offered prematurely. FINRA is currently engaged in the process of integrating the existing NASD and NYSE rules into a consolidated rulebook. This is an important project with wide reaching implications. It is, however, only one small part of the current debate surrounding the financial services regulatory structure. An important issue in this debate is the standard of care owed by a financial advisor to a client.

On July 27, the Securities and Exchange Commission (SEC) published a request for public comment related to its study of the obligations and standards of care of broker-dealers and investment advisers providing personalized investment advice about securities to retail investors (Study). The Study is required under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),⁸ which President Obama signed into law on July 21, 2010. As required by the Dodd-Frank Act, the SEC is requesting public input, comment, and data on issues related to the effectiveness of existing standards of care for brokers, dealers, and investment advisers, and whether there are gaps, shortcomings, or overlaps in the current legal or regulatory standards.

The Study, and the SEC rulemaking that will follow, have the potential to make the Proposed Rules a moot point or, at the very least, alter their implications substantially. We note that the statutory deadline for the publication of the Study is January 21, 2011, which is just over one month away. Therefore, we urge a delay in the adoption of the Proposed Rules while we await clarity on the broader standard of care issue. Such an approach will reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle within a relatively short timeframe.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to improve investor protection without unnecessary costs.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "B".

David T. Bellaire, Esq.
General Counsel & Director of Government Affairs

⁸ Public Law No: 111-20, available at http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf.