NAIFA

National Association of Insurance and Financial Advisors

2901Telestar Court • Falls Church, VA 22042-1205 • (703) 770-8188 • www.naifa.org

September 9, 2010

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

Via Electronic Mail: rule-comments@sec.gov

Re: SR-FINRA-2010-039

Dear Ms. Murphy:

This letter presents the views of the National Association of Insurance and Financial Advisors ("NAIFA") in response to the Securities and Exchange Commission (SEC) request for comments on the proposed rule changes to adopt the Financial Industry Regulatory Authority (FINRA) Rules 2090 and 2111 as part of the Consolidated FINRA Rule Book. The proposed rules, which impose "know your customer" and suitability obligations on broker-dealers, are based on, and revise, NYSE Rule 405(1) and NASD Rule 2310 and its related interpretative materials.

NAIFA comprises more than 700 state and local associations representing the interests of 200,000 members and their associates nationwide. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's largest financial services membership association.

The vision of NAIFA is to protect and promote the critical role of insurance in a sound financial plan and the essential role provided by professional agents and advisors. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of our members who assist the public in achieving financial security and independence. Approximately 80 percent of all NAIFA members are licensed as Registered Representatives of broker-dealers ("Registered Representatives") and market and service mutual funds, and a representative percentage are Investment Adviser Representatives.

Like FINRA and the SEC, NAIFA believes that strong investor protections are essential, and we support continued efforts by both FINRA and the SEC to safeguard investor interests. The proposed rules appear to be intended to further these efforts, and NAIFA generally supports FINRA's goals in proposing these revisions.

We applaud FINRA and the SEC for their efforts to incorporate FINRA rules, NASD rules and NYSE rules into a single consolidated FINRA Rulebook, which will help to avoid the confusion and uncertainty caused by multiple, often duplicative rules and interpretative materials. Moreover, we greatly appreciate FINRA's consideration of, and positive response to, many of the comments submitted by NAIFA and other interested parties in connection with the original request for comments (Regulatory Notice 09-25) on the proposed rules and the broader issue of whether FINRA should "propose expanding suitability obligations to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities." However, although we applaud FINRA's decision not to expand the scope of the suitability rule to cover recommendations involving non-securities products, we remain strongly concerned that FINRA appears to believe it has the authority to do so – and did not rule out the possibility of doing so in the future.

As we stated in our June 29, 2009, letter to FINRA in response to its original request for comments on the issues raised by Regulatory Notice 09-25, NAIFA's concerns are based on our belief that FINRA's expansion of its suitability obligations beyond recommendations involving securities products would be both unnecessary and inappropriate. The likely result of broadening the scope of the suitability obligations would be that a registered representative would have to run all recommendations of investment products, services and strategies through the broker dealer and conduct a FINRA suitability analysis for all investment products and strategies recommended by the representative, regardless of whether the recommendation involved securities. NAIFA believes that requiring registered persons to conduct suitability analyses for non-securities products is outside the scope of FINRA's authority and jurisdiction, and that such activity is beyond the expertise of both FINRA and broker-dealers. Moreover, in the case of insurance products, for example, imposing such a requirement would duplicate regulatory requirements already in place, wasting valuable resources and providing no added benefit to the consumer.

NAIFA therefore reiterates its opposition to expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities for the following reasons:

1. **FINRA does not have jurisdiction over products and services that are not securities. Expanding FINRA's authority to include such products and services would result in costly duplication, inefficient application, and ineffective oversight.**

In its response to comments, FINRA indicates that it disagrees with those commenters who argued that FINRA did not have jurisdiction over non-securities products. We believe this is misguided. The basis for such an expansion of FINRA's jurisdiction over transactions, products and services that do not involve securities is doubtful, and there are significant questions as to whether it would survive a court challenge.

Such an expansion of jurisdiction also poses important administrative problems, because neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities products or transactions. It is unrealistic to assume that FINRA and broker/dealers will be able to understand the multitude of products that could be classified as "investment products" in sufficient detail to effectively meet the requirements of the suitability rule.

In order to implement and maintain oversight of non-securities transactions, both FINRA and broker/dealers would have to expend time and resources that would be better used on more effective regulation of higher-risk securities-based transactions. FINRA should avoid a situation in which the attention of its regulators is spread too thin, because consumers would ultimately be better served by regulatory oversight that is focused on financial products that are within FINRA's area of expertise and that carry a higher degree of risk for the consumer.

2. **Expansion of FINRA authority over non-securities products would be duplicative and provide no added benefit to consumers because insurance and many other non-securities products are already subject to comprehensive regulation by state regulators.**

All NAIFA members are licensed insurance agents in one or more states, and insurance products comprise the vast majority of other "investment products" that they market and service. For insurance agents, expansion of FINRA authority into other "investment products" would be duplicative and unnecessary because insurance products, including fixed annuities, are already subject to comprehensive regulation at the state level through the efforts of state insurance departments and other state regulators. Moreover, state regulators in over 40 states have already adopted annuity suitability laws based on their unique understanding and knowledge of the products over which they have jurisdiction.

The NAIC model law on which these state laws are based was recently updated to closely mirror the stringent suitability standards established by FINRA for the sale of variable annuities in its Rule 2330. Thus, the application of FINRA rules to these products would provide no additional protection for the customer, because of the existing system of supervision and the relatively low risk of non-securities transactions, and, moreover, could result in harmful, conflicting, and confusing regulatory requirements that will detract from the goal of effective consumer protection. Additionally, this change would be contrary to current governmental and regulatory efforts to modernize the regulatory structure and eliminate costly duplication.

*   *   *

Thank you for your consideration of our views. Please contact the undersigned if you have any questions regarding our comments.

Yours Truly,

/s/ Gary A. Sanders

____
Gary A. Sanders
Vice President, Securities and State
Government Relations