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September 15, 2010

**VIA ELECTRONIC MAIL (rule-comments@sec.gov)**

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

**RE: *Release No. 34-62718; File No. SR-FINRA-2010-39; Proposed Know Your Customer and Suitability Rules***

Dear Ms. Murphy:

TD AMERITRADE, Inc.<sup>1</sup> (“TD Ameritrade” or “the Firm”) appreciates the opportunity to submit additional comments on the proposal, in which FINRA seeks the Securities and Exchange Commission’s (“Commission”) approval to adopt FINRA Rules 2090 and 2111 and related Supplemental Material governing member firms’ “Know Your Customer” and Suitability obligations, respectively. TD Ameritrade fully supports FINRA’s efforts to streamline and consolidate the NASD and NYSE rulebooks, and the Firm commends FINRA for many of the thoughtful changes it has made since its original proposal was first considered in June 2009.

TD Ameritrade strongly opposed FINRA’s original proposal as it could have adversely impacted a member firms’ ability to offer brokerage services to self-directed clients. While TD Ameritrade commends FINRA for its willingness to consider and resolve issues raised by member firms, the Firm does not support adoption of the rules at this time. Specifically, TD Ameritrade believes that FINRA’s proposed changes would be better considered once the Commission has completed its study of standards of care by broker-dealers and investment advisers and determined whether to conduct rulemaking in this area. FINRA’s proposal will be expensive to member firms as they re-tool their processes and systems to take into account the new requirements. Waiting for the Commission to complete its study and possible rulemaking before creating new requirements in this area is logical and ensures that member firm resources are not wasted.

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<sup>1</sup> TD Ameritrade is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation (“TD Ameritrade Holding”). TD Ameritrade Holding has a 35-year history of providing financial services to self-directed investors. TD Ameritrade Holding’s wholly owned broker-dealer subsidiary, TD Ameritrade serves an investor base comprised of over 5.4 million funded client accounts with approximately \$340 billion in assets. During the month of July 2010, the Firm averaged a total of 327,000 client trades per day.

Finally, the Firm continues to recommend that FINRA's proposal allow member firms to not collect certain information if it makes a reasonable determination that such information is irrelevant or unnecessary.

***FINRA Know Your Customer and Suitability Rulemaking Should Await Commission Action***

As required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Commission currently is conducting a study of the existing standards of care for broker-dealers and investment advisers.<sup>2</sup> The Study is wide ranging and once it is complete, the Commission will have the authority to "write rules that would create a uniform standard of conduct for professionals who provide personalized investment advice to retail customers."<sup>3</sup> Obviously, the outcome of the Commission's Study and potential for rulemaking cannot be predicted at this time.

Although FINRA argues that the "suitability obligations set forth in proposed Rule 2111 would not be inconsistent with the addition of a fiduciary duty at some future date," it is certainly possible that the Commission could adopt rules that require both brokers and advisers to take a principles-based versus a rules-based approach when making suitability determinations. Or the Commission could require brokers and advisers to collect information different from the Proposed Rule 2111 requirements. If the Commission takes either approach, proposed Rule 2111 will need to be significantly amended, re-proposed and adopted – a significant waste of time and resources. Moreover, FINRA has not identified the urgency behind adopting additional requirements beyond the NASD/NYSE rulebook consolidation. Given this, TD Ameritrade respectfully requests that FINRA's proposal not be acted on until the Commission's Study and, if applicable, rulemaking, have been completed.

***The Industry Should be Given Adequate Time to Adjust Their Processes, Procedures and Systems in Response to the New Rules***

The rule filing proposes that FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice no later than 90 days following Commission approval. The implementation date will be no later than 240 days following Commission approval.

TD Ameritrade believes member firms will require additional time to incorporate the changes to Rule 2090 and 2111 into existing systems and processes. Member firms will need to examine the extent to which their new account opening processes (both on paper and electronic) may need to be changed to comply with Rule 2090. Moreover, member firms will need to train representatives and make systems changes to comply with the additional information collection obligations under Rule 2111. The Firm strongly believes that the industry should be given at

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<sup>2</sup> See *Study Regarding Obligations of Brokers, Dealers and Investment Advisers*, Rel. No. 34-62577 (July 27, 2010).

<sup>3</sup> Speech by Chairman Mary Schapiro, "Moving Forward: The Next Phase in Financial Regulatory Reform," Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (July 27, 2010).

least 12 months following FINRA notification to complete the changes necessary to comply with Rule 2090 and 2111. Under the current proposal, firms may have as little as six months to complete changes they deem necessary – which is far too short.

***FINRA Should Allow For Reasonable Determinations That Certain Required Information Is Irrelevant or Unnecessary***

TD Ameritrade previously commented that member firms should have the ability to determine the information they need to collect when recommending products and services. Specifically, the Firm noted that information that is important to collect in recommending one product may be unnecessary in recommending another.

The Firm continues to believe that member firms should be allowed flexibility in determining what client information is necessary to collect and analyze to have a reasonable basis for making a recommendation. As a result, the Firm recommends that Rule 2111 be amended to permit member firms to make a reasonable determination that the collection of a certain piece of data is either irrelevant or unnecessary in making a suitability determination. Under this approach, Firms would be required to document what required information was not being collected and the reasons behind such a decision.

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The Firm appreciates the opportunity to once again comment on the proposal. Please contact me at 443.539.2128 if you have any questions regarding our comments.

Sincerely,

/S/

John S. Markle  
Deputy General Counsel, Regulatory Operations