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September 24, 2010

VIA EMAIL ([Rule-comments@sec.gov](mailto:Rule-comments@sec.gov))

Florence E. Harmon, Acting Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: SR-FINRA-2010-039 Rule Proposal/Rules 2090 (Know Your Customer)

Dear Ms. Harmon:

I appreciate the opportunity to comment on the above-referenced rule proposals. I have been representing investors in securities arbitration proceedings since 1992. I am currently a member of the board of directors of the Public Investors Arbitration Bar Association. I write in support of the rule changes. However, certain changes to the proposed rules should be considered to better protect the interests of public investors.

Proposed Rule 2111

The broadening of this rule to include recommended "investment strategies" is a welcome improvement to the rule. However, Rule 2111 lacks any definition of the terms "recommended" or "recommendation". Because the amendments are being made as part of the Consolidated FINRA Rulebook, it would be appropriate to incorporate into Rule 2111 the definition of "recommendation" as set forth in NYSE Rule 472.40(1). That rule includes in the definition of "recommendation" any advice, suggestion, or other statement that is intended or should be expected to influence a customer to "hold" a security. Brokers frequently make recommendations to customers to hold securities in their portfolios. Such recommendations can have catastrophic consequences for investors and should subject brokers and their broker/dealers to liability if such a "hold" recommendation is unsuitable.

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Proposed Rule 2090

The incorporation of the NYSE's "Know Your Customer" rule is an appropriate addition to the FINRA rules. However, just as with Rule 2111, Rule 2090 should provide that brokers are required to use their knowledge of the customer with respect to hold recommendations, in addition to purchase and sale recommendations. Such clarification is particularly relevant to circumstances in which an investor transfers securities from one firm to another. Brokers should be required to use their knowledge concerning their customers in making recommendations to customers about whether securities transferred into the new broker/dealer should be held or sold.

Conclusion

The proposed rules are beneficial to public investors, but the suggested modifications would improve the rules for the protection of the public investor.

Sincerely,

JOHNSON, POPE, BOKOR,  
RUPPEL & BURNS, LLP

/s/ Scott C. Ilgenfritz

Scott C. Ilgenfritz

SCI/dh