



St. John's University School of Law
Securities Arbitration Clinic

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May 4, 2011

VIA ONLINE SUBMISSION

Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *SR-FINRA-2011-016*
Proposed Rule Change to Delay the Implementation date of FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability)

Dear Ms. Murphy:

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to comment on the proposed delay of implementing FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) ("the Rules"). The Clinic opposes the proposed delay because these rules are primarily clarifications of existing obligations set forth in NASD Rule 2310 (Recommendations to Customers (Suitability)) and NYSE Rule 405(1) (Diligence as to Accounts). Delaying implementation is unnecessary where the essence of fundamental obligations remains intact and, thus, firms should already be acting in compliance with the new Rules.

The Securities Arbitration Clinic is a not-for-profit organization that provides free legal representation to public investors, who are otherwise unable to obtain legal representation, in their securities disputes. The Clinic is staffed by fifteen second- and third-year law students. Our clients are generally of modest means and have been turned down by a minimum three attorneys. If the Clinic did not represent them, our clients would likely be forced to proceed *pro se* or not pursue their claims at all. In addition to representing aggrieved investors, the Clinic is

committed to investor protection. Accordingly, we have a strong interest in rules that affect investors.

When the Securities and Exchange Commission (“SEC”) approved adopting the Rules, it noted that these obligations were “critical to ensuring investor protection and fair dealing with customers.”¹ FINRA Rule 2090, the “Know Your Customer” rule, continues the existing obligation that broker-dealers use reasonable diligence to know the essential facts concerning every customer. FINRA Rule 2111, the “Suitability” rule, continues the existing obligation of broker-dealers to have a reasonable basis to believe that a recommendation is appropriate for the specific customer. Together these two obligations have been essential in protecting investors from brokers who may otherwise give advice that is inappropriate for their particular situation. Prompt implementation of these obligations would thus further of the goals of preventing fraudulent and manipulative acts and practices, as well as protecting investors and the public interest.²

The given reasons for the delay is “to allow firms additional time to determine the types of systems and procedural changes they need to make, implement those changes, and educate associated persons and supervisors regarding compliance with the rules.” However, the given reasons are inconsistent with the reality that the Rules represent continuation of existing obligations which firms should already be in compliance with. The changes were in large part clarifications of existing obligations; many changes were merely eliminations of redundancy. In addition, the SEC noted the Rules also “incorporate into the rules certain settled interpretive guidance and case law.”³ Therefore, firms should already be acting in compliance with the new rules. Further, the Rules were adopted on November 17, 2010 and scheduled to be effective on October 7, 2011, giving nearly a year to firms to make any necessary preparations. There is no need to delay these clarifications by nearly another year when firms are already under the same fundamental obligations.

Thank you for the opportunity to comment on this proposed delay. We believe that the proposed delayed implementation of FINRA Rules 2090 and 2111 is unnecessary. We ask that the SEC reject this delay. Thank you for your consideration of this important matter.

Respectfully,

/s/ Michael Lorz

Michael Lorz
Legal Intern

¹Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039).

² See 15 U.S.C. 78o-3(b)(5).

³ Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039).

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