Exhibit 2c

savage & ASSOCIATES

SAMPLE FORM A COMMENT LETTER

Gary LeSage
Insurance and Investment Broker
Gary.LeSage@savageandassociates.com

4427 Talmadge Road
P.O. Box 8526, Toledo, OH 43623
Office: (419) 475-8665
Fax: (419) 475-8240

June 17, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Asquith:

I am writing to express my concern about FINRA Regulatory Notice 09-25 which proposes to consolidate the existing rules governing suitability and the know-your-customer obligations into a new FINRA Rule 2111 (Proposed Rule). As a financial advisor, I know the importance of making suitable recommendations to my clients to assist them in achieving a safe and secure retirement, save for the education of their children, or achieve other financial objectives. I support efforts to improve customer protection. However, I am concerned that FINRA's proposal will have significant unintended consequences. My concerns are summarized below:

• I Oppose FINRA's Effort to Expand Suitability Requirements to Non-Security Investment Products or Services - As a financial advisor, I vigorously oppose efforts to expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, I oppose FINRA's suggestion that it expand the suitability obligations to all recommendations of investment products, services, and strategies made in connection with a broker-dealer's business, regardless of whether the recommendations involve securities.

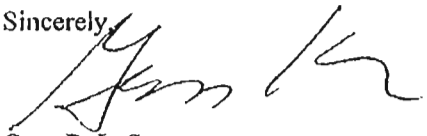
• I Oppose the Expansion of Suitability Criteria to Include Portfolio Level Concerns - A client's investment time horizon, liquidity needs, and risk tolerance are important considerations. However, I believe they are best judged at the portfolio level. The Proposed Rule would instead require each securities transaction to be suitable based upon these additional criteria. I believe this would have unfortunate unintended consequences for my clients who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods.

• I Oppose the Expansion of the Suitability Review to Information Known by My Broker-Dealer - I operate my own small business. From time-to-time, I compete with other financial advisors who are registered with the same broker-dealer. As a result, it is quite possible for my broker-dealer's records to include information about a client that was collected by one financial advisor, but unknown to me at the time of my recommendation. The Proposed Rule would require independent broker-dealers to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated financial advisors to determine if there is other relevant suitability information 'known by' the firm. I believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection. I, therefore, oppose this aspect of the Proposed Rule.

• I Believe the Proposed Rule is 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. The resolution of this debate has the potential to make the Proposed Rule a moot point. As a result, I urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

I encourage FINRA to take these concerns into consideration as you advance the Rule Proposal. Thank you for considering my comments.

Sincerely,



Gary R. LeSage
Insurance and Investment Broker
Savage & Associates, Inc.

SAMPLE FORM B COMMENT LETTER

From: John DeSantis [mailto:john.desantis@ingfp.com]
Sent: Tuesday, June 23, 2009 9:47 AM
To: Comments, Public
Subject: Expanding Suitability Obligations

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

At the outset, let me clearly state that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Another reason why the expansion of FINRA's suitability obligations is unwise is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

From: radamo@integrityiwm.com
Sent: Sunday, June 28, 2009 5:01 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I am a licensed insurance professional and registered representative and owner/operator of a wealth advisory firm in Southern California blessed with a fairly affluent client base. I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. The measures proposed far extend the charter, the letter and most importantly, the spirit under which FINRA serves. Thos far-reaching proposal is not in the best interest of the consumer and certainly the industry. The grounds for regulatory oversight exist, and FINRA's extension is not just unnecessary, but likely clumsy in operation.

I respect, FINRA and applaud its ambitions for cleaning up poor industry conduct. That objective is meritful. This Notice, however, extends far beyond reasonable and acceptable oversight for this body. FINRA's authority should not be expanded to include non-securities products and services. Please reconsider the measure.

Ralph G. Adamo

INTEGRITY

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Please visit our website at:
www.integrityiwm.com

2991 MacArthur Boulevard, Suite 215
Newport Beach, California 92660

Please consider the environment before printing this message.

From: aadil@cmsmith.com
Sent: Monday, June 29, 2009 3:31 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Andrew Adil
CM Smith Agency, 100 Western Blvd
Glastonbury, CT 06033

June 29, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am writing to you because I object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Even though I agree that there are representatives out there that will take advantage of their clients, they are an extremely small minority.
The government's response to this malfeasance is to severely punish the 99% of honest, hardworking representatives who are already living under several regulatory and financial constraints. FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

FINRA's suitability obligations proposal is also wrong because these products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

For the reasons stated above and more, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you.

Sincerely,

Andrew S. Adil

From: Agte, Aaron [Aaron.Agte@vantagewealthmgmt.com]
Sent: Tuesday, June 23, 2009 2:20 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I understand FINRA's position and it does make sense for a single regulatory agency to be able to oversee all recommendations a registered rep makes to a client, rather than just securities recommendations.

However, this only makes sense if the states will cede insurance regulations and oversight to FINRA. It would not make sense for registered reps to report and comply to two different agencies for the same transaction, especially if there exists the possibility of conflicting regulations.

Aaron Agte
Director of Financial Planning

Vantage Wealth Management, LLC
A comprehensive approach to financial security

1 Waters Park Dr., Suite 210, San Mateo, CA 94403
650-638-9600 * 866-638-5330 Toll Free * 650-638-9604 Fax * www.vantagewealthmgmt.com
"We're never too busy to see if we can help any of your friends, family members, or colleagues."

From: Andy Alepra [andy.alepra@lpl.com]
Sent: Friday, June 26, 2009 1:57 PM
To: Comments, Public
Subject: Comment On Expansion of Rule 2111

Importance: High

I firmly oppose any expansion of Rule 2111 to include "non-securities, services and strategies". I already firmly support all suitability requirements for the products I offer and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to consumers.

Respectfully,

Andrew K Alepra

LPL Financial Services (Financial Advisor--IL)

From: Byron Allen [ByronAllen@AmericanSavingsLife com]
Sent: Wednesday, June 24. 2009 1 53 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

DATE: June 23, 2009

TO: Marcia E. Asquith

Office of the Corporate Secretary

FINRA

1735 K Street, NW

Washington, DC 20006-1506.

RE: FINRA Regulatory notice 09-25

Dear Ms. Asquith,

I am the President of a small life insurance company and would like to voice my opinion on the proposed FINRA Regulatory notice 09-25.

I firmly believe that FINRA's authority should **NOT** be expanded to include non-securities products and services. There is a significant difference in the complexity and risk associated with securities products and non-securities related insurance products. It would be an inequitable burden on the sellers of non-securities related insurance products, such as our company, if we were to be subject to the same regulatory compliance expenses as those who sell the more complex and risky securities related products.

It is vital that regulators weigh the cost of regulation with the hoped for benefit the public receives. If excessive regulation is imposed on the small life insurance company industry, many companies will be forced out of business due to the increased regulatory costs, **thereby lessening the competitive market that provides the best possible value for the consumers**; the very consumers you are trying to protect.

Please consider this fact seriously. insurance and other non-securities products are already subject to comprehensive regulation at the state level. Significant state-regulated suitability standards are already in place for the sale of annuities and similar insurance products. To add an entire extra level of costly regulation through FINRA would very likely have the effect of choking off small life insurance companies, such as ours, thereby negatively affecting a large component of the current competitiveness in the insurance industry.

Small life insurance companies such as American Savings Life Insurance Company currently cannot afford to sell securities-related products, simply because **we do not have the scale to support the excessive regulatory expenses associated with such products**. If this regulatory overhead were to now include non-securities insurance products, then every small life insurance company will be burdened with an inequitable burden, where I am quite sure that the **ultimately the cost to the public through decreased competition will exceed the hoped-for increased protection through the increased regulation**.

For the reasons stated above, **I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities**. Thank you for considering my views on this issue.

Most earnestly,

- Byron Allen

Byron F. Allen, President

American Savings Life Insurance Company

935 E. Main Street, Mesa, Arizona 85203-8849

480-835-5000 / 800-880-2112 (x304)

From: george.allen@nmfn.com [mailto:george.allen@nmfn.com]
Sent: Thursday, June 25, 2009 10:03 AM
To: Comments, Public
Cc: george.allen@nmfn.com; cgcrandall@usadatanet.net
Subject: FINRA proposed changes in expansion of suitability oversight
Importance: High
Sensitivity: Confidential

To whom it may concern

I am a financial advisor with over 20 years in the financial securities business.

I am firmly opposed to FINRA taking on additional oversight in areas where they have no jurisdiction currently, whether it is insurance, annuities or other non securities products.

I believe the people who promote unsuitable sale should be penalized. However within the current laws there is plenty of regulation that perhaps simply needs better enforcing. The compliance complexities today take an inordinate amount of time from our time to be able to help our clients. I believe that the amount of unsuitable sales in the retail client/ advisory relationship is probably very small.

Perhaps greater oversight needs to be addressed at the corporate level, where the CDO's, SIV's and subprime issue started. These were not issues of financial reps selling to the individual client.

I appreciate what FINRA does, but until the existing laws, and the problems that lead to this debacle are evaluated thoroughly, I do not believe more is necessary.

With respect

George Allen

George R. Allen, CLU, ChFC, CFP®
Wealth Management Advisor
100 West Utica Street; Oswego, NY 13126
(315)343-2323 Office

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Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Reid L. Allen [reid@incomearchitects.net]
Sent: Friday, June 26, 2009 4:09 PM
To: Comments, Public
Subject: Rule 2111

I firmly oppose any expansion of Rule 2111 to include "non-securities, services and strategies".
I already firmly support all suitability requirements for the products I offer and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and more importantly to consumers.

Reid L. Allen, CFP®
T: 916-960-0101
F: 916-960-4081
INCOME ARCHITECTS
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June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 09-25 – Proposed Amendments to the Suitability and Know Your Customer Rules

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the above-referenced Regulatory Notice, in which FINRA proposes to adopt new modified rules and related Supplementary Material governing suitability and know-your-customer obligations in the Consolidated FINRA Rulebook.

Suitability and know-your-customer obligations are among the bedrock principles underlying investor protection and fair dealing with customers. SIFMA, therefore, commends FINRA for its efforts to streamline and enhance rules within the single rulebook that support these two obligations. We believe, however, that certain provisions of the rule require reconsideration. Specifically, our comments will focus on four main points, wherein we request that FINRA revise the rule proposal as follows:

- *Institutional Client Suitability*. Eliminate the newly proposed institutional client affirmative opt-out requirement from the institutional customer exemption and instead retain only the independent judgment and evaluation requirements, which are reflected currently in NASD IM 2310-3.

- *Know Your Customer Requirements*. Revise proposed Rule 2090 to more sharply focus on information necessary to open an account and remove references to information more appropriate for a suitability analysis.

- *Enumerated Suitability Elements*. Clarify that member firms, when making a recommendation, need not obtain information related each of the new enumerated

[1] SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

suitability factors in all instances, but can take into account, as appropriate, the relevance of each factor depending on the specific facts and circumstances of the recommendation.

- *Extension of Suitability Obligations to Non-Securities Investment Products.* Decline to extend suitability obligations beyond securities investment products since other regulators already have jurisdiction and in some cases specific rules for such suitability obligations.

In addition, and as set forth in Section V of the letter, SIFMA provides further comments and recommendations for technical clarifications to the proposal.

I. Exemption for Institutional Customers From Customer-Specific Suitability Obligations

In the proposal, FINRA seeks to revise the definition of "institutional customer" in the suitability rule to increase the threshold to $50 million in assets from the current $10 million invested in securities and/or assets under management. SIFMA supports this new definition and commends FINRA for harmonizing the definition of "institutional customer" in the suitability rule with the definition of "institutional account" in NASD Rule 3110(c)(4). Consistent standards within the FINRA rulebook – and indeed across regulators – produces more efficient, effective and clear regulation that is beneficial to investors, regulators and market participants alike.

A. The Affirmative Indication Requirement is Impractical and Will Render the Institutional Customer Exemption Ineffective

SIFMA has several concerns with the affirmative indication requirement of the proposed institutional customer exemption. As proposed, the exemption provides that a member firm satisfies its customer-specific suitability obligations to an institutional customer if:

a. The customer *affirmatively indicates* that it is willing to forego the protection of the customer-specific obligation of the suitability rule; *and*

b. The member firm or associated person has a reasonable basis to believe that the institutional customer is (i) capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (ii) exercising independent judgment in evaluating the member's or associated person's recommendations.

The two requirements articulated in subsection (b) reflect the current standard for institutional suitability under NASD IM 2310-3 in the FINRA Transitional Rulebook. The proposed affirmative indication requirement is a new condition that firms would have to satisfy in order to avail themselves of the exemption. FINRA's proposal does not provide a rationale for this additional requirement, and we are unaware of any specific regulatory concerns or issues with the current institutional exemption, as set forth in IM 2310-3.

SIFMA believes that this aspect of the proposed rule is highly problematic for several reasons. First, we believe an affirmative opt-out of customer-specific suitability is unnecessary in light of the other two currently existing conditions, especially when we consider the proposed new definition of institutional customer. In our view, institutional clients capable of evaluating risks independently and exercising independent judgment in assessing a member firm's recommendations do not need customer-specific suitability protections. Indeed, many institutional investors already are obligated to make their own suitability determinations pursuant to other applicable regulatory schemes. For example investment advisors have fiduciary obligations to their clients and typically accept responsibility for determining the suitability of investments made on behalf of their managed accounts.[2]

Moreover, because institutional clients are highly unlikely to affirmatively forego suitability protections for commercial reasons, this new requirement will have the practical effect of negating both the proposed and existing exemption. Thus, contrary to FINRA's stated objective of creating a "clear exemption" for recommendations to institutional clients, the net effect of this requirement will be to subject recommendations to institutional clients to the full range of enumerated suitability elements -- the vast majority of which are ill-suited for non-retail clients.[3] In cases where a firm is unable to obtain the affirmative opt-out from the institution, the determination of "financial ability," as well as the other suitability elements (e.g., liquidity needs, investment time horizon and risk tolerance) make little sense.[4] Similarly, it will be virtually impossible for an associated person to determine the institutional customer's "other investments" and utilize that information in the suitability review. Institutional customers typically are serviced by many broker-dealers and generally are unwilling to disclose information about other investments or trading activities through other firms.

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[2] The following language is from a typical letter an investment adviser provides to broker-dealers in lieu of normal account opening documentation for a DVP account:

> We are a registered investment adviser and act as such for a number of clients under an agreement or power of attorney to invest on their behalf. We are fully aware of the financial position and the investment objectives and investment limitations of these clients. We are capable of independently evaluating the investment risk of the orders we place with BROKER-DEALER and are exercising independent investment decisions without reliance on BROKER-DEALER's recommendations or advice, if any. In lieu of furnishing BROKER-DEALER with specific evidence of our authority and other information in connection with each account in which we give an order, we agree (without limiting our obligations to BROKER-DEALER) to indemnify and hold BROKER-DEALER harmless in the event that any person or entity should make claim against BROKER-DEALER that BROKER-DEALER's execution of any order on the basis of our instruction was without authority or was not suitable for the account. We represent that we have all necessary authorizations to enter into this Agreement.

[3] Indeed, we question the appropriateness of limiting the exemption to customer-specific suitability. If the institution satisfies the standards of independent valuation and judgment, the institution should be exempt from all aspects of the suitability rule.

[4] For example, member firms typically conduct standard credit department analysis and implement related credit limits whenever a transaction creates credit risk to the firm.

In light of the forgoing, SIFMA respectfully requests that FINRA remove the affirmative indication requirement in any proposed rule change that it files with the SEC and return to the current standard. We also note that the proposed affirmative indication requirement would create a regulatory imbalance with corresponding requirements in major non-U.S. jurisdictions, which do not have a similar affirmative requirement.[5]

B. Application of Suitability Standards to Institutions

SIFMA also respectfully requests that FINRA consider bifurcating the rule proposal to clearly delineate the suitability obligations of retail and institutional customers, recognizing the critical differences between the two types of clients. For example, the basic provisions of proposed Rule 2111(a) of the rule make sense in connection with the retail customers but do not with respect to institutions. Further, the related suitability Supplementary Material is, for the most part, inapposite with respect to institutions. Restructuring the proposed suitability rule to separately deal with institutional clients, we believe, will provide additional clarity as to member firms' specific obligations to their retail and institutional customers.[6]

II. Know Your Customer Obligations

SIFMA is concerned that FINRA's proposed "know your customer" requirements unnecessarily overlap with the proposed suitability requirements. Proposed Rule 2090 and its Supplementary Material .02 would require firms to obtain "essential facts" about all customers upon account opening, including information relating to the *"customer's financial profile and investment objectives or policy,"* and through the life of the client relationship. As explained in FINRA's Regulatory Notice:

> Firms would be required to use due diligence, in regard to the opening and maintenance of every account, to know the essential facts concerning every customer (including the customer's *financial profile and investment objectives or policy*). This information may be used to aid the firm in all aspects of the customer/broker relationship, including, among other things, determining whether to approve the account, where to assign the account, *whether to extend margin* (and the extent thereof) and whether the customer has the *financial ability to pay* for transactions. The obligation arises at the

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[5] *See. e.g.*, Financial Services Authority Conduct of Business Sourcebook Rule 9.2.8 (providing that a firm may assume that a "professional client," in relation to the products, transactions and services for which the professional client is so classified, may assume that the client is able to financially bear any risk consistent with the client's investment objectives); *see also* Article 35(2) of the MiFID Implementing Directive.

[6] Given market practice and the manner in which member firms often interact with institutional customers, it also would be helpful for FINRA to make a formal written distinction between a (i) a customer-specific recommendation; and (ii) information about the availability of securities for purchase or sales, trading ideas, strategies, market color and commentary ("commentary') and research. Specifically, information that certain securities are available for purchase or sale such as "axe sheets" and similar "runs," indications of interest, working a block size customer order to find the other side of that trade should not be considered recommendations. Similarly, member firm commentary to institutional clients that discusses strategies, market color and trends, or trade ideas should also not be considered a recommendation.

beginning of the customer/broker relationship and does not depend on whether a recommendation has been made (emphasis added).

While SIFMA fully supports "know your customer" obligations, we believe that the rule proposal blends "know your customer" concepts with suitability requirements. This blending may stem from the fact that in proposed Rule 2090, FINRA incorporated many of the elements currently contained within NYSE Rule 405 -- a rule that historically served the dual purposes of both account opening and suitability requirements because NYSE did not have an independent suitability rule.[7] Certainly, the FINRA Consolidated Rulebook should continue to have a stand-alone suitability rule as well as other rules related to approval and supervision of accounts. As such, we believe the proposed know-your-customer rule should be limited in scope to essential facts necessary to open the account – i.e., the identity of each account owner, their address, the legal authorization of each person having investment authority with respect to the account, the source of funding for the account and the credit status of the account owners. Information relative to "whether to extend margin," "investment objective," and "financial profile" may be necessary for a suitability analysis, and efficient to obtain at account opening, but it is not necessarily required for certain institutional accounts and self-directed execution-only accounts.[8]

Moreover, the collection of suitability information under proposed Rule 2090 creates potential risk issues where the client is self-directed or has trading directed by an authorized third party fiduciary. The possession of this data could create uncertainty as to a member's responsibilities where a customer, or a third party power of attorney, engages in unsolicited trading activity that is inconsistent with the investment objective and financial profile information collected under the proposed rule.

SIFMA therefore recommends that FINRA remove proposed Supplementary Material .02 to Rule 2090 in its entirety from the rule proposal, and instead permit each firm to interpret and apply the "essential facts" standard to their particular business model, recognizing that it is the nature of the relationship between the firm and customer that dictates those facts. This approach retains the flexibility currently embedded within NYSE Rule 405 and at the same time avoids duplication of other existing regulatory obligations governing approval and supervision of accounts, such as Rule 3110 (Books and Records), 3011 (Anti-Money Laundering Compliance Program), Customer Identification Program requirements, and the SEC's books and records rules.

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[7] Rule 405 articulates a general standard that obligates firms to "use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization."

[8] The undefined term "*financial profile*" is particularly confusing in the context of know-your-customer obligations when read in conjunction with Rule 2111 related Supplementary Material .03. There, FINRA uses the similar term "*customer's profile*" in connection with customer specific suitability obligations and cross-references expanded suitability elements delineated in Rule 2111(a). Consequently, there is great uncertainty as to whether Rule 2090 is intended to suggest that broker-dealers must obtain the full range of information enumerated in proposed Rule 2111 for all accounts at the inception of the relationship, regardless of the nature of the account or transactions executed therein.

III. Proposed Suitability Data Elements

Currently, NASD Rule 2310 requires broker-dealers and associated persons to obtain information about a customer's financial status, tax status and investment objectives. Under proposed Rule 2111(a), FINRA seeks to expand the information to be gathered to include: (1) customer's age, (2) investment experience, (3) investment time horizon, (4) liquidity needs, and (5) risk tolerance.

SIFMA appreciates FINRA's efforts to enhance the suitability rule to more clearly identify the type of information that could be relevant to member firms and their associated persons when making recommendations to clients. We are concerned, however, that absent further clarification, the newly enumerated data elements could create a presumption that a recommendation is suitable only if information relating to each enumerated item is solicited and considered at the time of the recommendation, irrespective of the type of account, client or transaction.

SIFMA believes an overly prescriptive list of requirements -- i.e. "check the box" approach -- could compromise a firm's discretion in developing its own approach and process for making required suitability determinations. Given the wide array of customer needs, account types, and products, we believe it might not be in a customer's best interest, and indeed extremely difficult, to promote *a prescriptive list of* data elements that must be solicited and considered in *all cases* in order to make a suitable recommendation.[9] Based on a facts and circumstances determination, different data elements may or may not have relevance. Ultimately a member firm should be responsible for determining whether it has sufficient information to make a suitable recommendation to meet a customer's needs, and for demonstrating that it had a reasonable basis to make the recommendation.

SIFMA therefore requests that FINRA revise the proposal clarify that member firms, when making a recommendation, need not obtain information related each of the new enumerated suitability factors in all instances, but can take into account, as appropriate, the relevance of each factor depending on the specific facts and circumstances of the recommendation. This flexibility will also address concerns noted above about a one-size-fits-all approach to building a suitability profile for otherwise sophisticated and experienced clients that do not meet the proposed definition for institutional customer.

IV. Applying Suitability Obligations to Non-Securities Investment Products

SIFMA believes that extending FINRA's suitability rule to recommendations of non-securities investments or strategies raises a multitude of issues that should be carefully considered before FINRA submits any such proposal to the SEC. Of course, SIFMA member firms fully support the fundamental principle that investment products they sell to a customer should be appropriate for the customer. Nevertheless, non-securities investment products and services (including such products as fixed annuities, life settlements, and commodity futures)

[9] Further, some firms have developed sophisticated qualitative and quantitative methodologies to analyze client suitability factors. Indeed, these proprietary formulas and methods serve to differentiate the quality and effectiveness of a firm's recommendations.

generally are already subject to the jurisdiction and regulatory requirements administered by other regulatory authorities. Additionally, on June 17, 2009, the Department of Treasury proposed significant federal regulatory reforms to enhance customer financial protection that may result in additional customer protection requirements and regulatory oversight for non-securities investment products.[10] Consequently, the extension of suitability obligations to these products would create practical difficulties from a supervisory and compliance perspective due to potentially conflicting or redundant regulatory obligations.[11] SIFMA therefore strongly urges FINRA not to expand its suitability requirements beyond securities products and investment strategies without further analysis and discussion with appropriate stakeholders.

V. Additional Comments

A. Application of Suitability Obligations to Recommended Investment Strategies

SIFMA generally supports FINRA's proposal to extend its suitability rule to recommended investment strategies involving securities, but we request additional guidance concerning the scope of the undefined term "investment strategies involving securities." Additionally, we ask FINRA to clarify that there must be a reasonable nexus between the recommended investment strategy and a securities transaction in furtherance of the recommended strategy to trigger the suitability obligation. Absent this clarification, the proposed rule potentially could be construed to extend suitability obligations to all recommended "strategies," irrespective of whether a transaction culminated in furtherance of the recommendation.

B. All Facts Known to the Firm or Associated Person

The proposed rule would require that a member firm's suitability analysis be based on both information disclosed by the customer in connection with the required data elements and *the facts known to the firm or associated person.* SIFMA believes that introduction of the language "all facts known by the member or associated person" is overbroad, is too subjective a standard, and could unfairly impute general knowledge of the firm to an associated person that he or she might not actually possess. Indeed, as written, the proposal could implicate a host of interpretive ambiguities and conflicting duties of privacy and confidentiality with respect to (i) customer information that is provided to affiliates under separate relationships; (ii) information held by a division or function within the broker-dealer subject to an information barrier; (iii) information publically available or available through vendors; or (iv) information revealed in customer service interaction in a division outside of the one in which the account is being serviced.

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[10] See United States Department of the Treasury issued a white paper, "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation" ("Treasury White Paper") proposing numerous regulatory reforms to protect consumers and investors, including a proposal to create a new Consumer Financial Protection Agency with broad jurisdiction to protect consumers of financial products.

[11] We note it is not clear that FINRA has a jurisdictional nexus pursuant to the Exchange Act to regulate non-securities products and services.

A common example is where a customer has multiple business relationships with a firm and has not shared information across the organization due to regulatory or privacy concerns (e.g., Chief Executive Office maintains a private client relationship with a registered representative and CEO's company has retained the member firm's investment bank in connection with sale of business). While the full range of information might be "known by the firm," the CEO's registered representative may have no personal knowledge about the potential sale of the company which could benefit the CEO personally. To attribute "firm knowledge" in this case would be impractical, as well as immensely difficult to administer and monitor from a compliance perspective, particularly for firms where customer relationships can be managed by more than one business or assigned representatives.

SIFMA therefore respectfully requests that FINRA remove this aspect of the proposal from any proposed rule change that is filed with the SEC. Alternatively, FINRA should modify the provision to state that the recommendation must be based on facts "available from customer records to or actually known by the associated person making a recommendation" as a reasonable and constructive alternative.

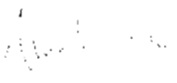
C. Implementation

To allow for adequate time for implementation and training in connection with the new requirements, SIFMA respectfully requests that any proposed rule change filed with the SEC provide for an extended implementation period. Firms will need a significant amount of time to modify account opening and retention systems, amend attendant forms, and collect the new suitability information for existing clients who are recommended a new securities transaction.

* * *

SIFMA appreciates the opportunity to provide comments on FINRA's proposed new rules suitability and know your customer obligations, and looks forward to continuing the dialogue as FINRA moves forward with this critical rule proposal. We also request the opportunity to meet with FINRA staff to discuss the proposal and our letter before FINRA files any proposed rule change with the Securities and Exchange Commission ("SEC"). If you have any questions or require further information, please contact the undersigned at (212)313-1268.

Sincerely,



Amal Aly
Managing Director and
Associate General Counsel

This email is to register my strong objection to changing suitability rules for no good reason at all. Please stop tinkering with rules that are not broken.

Antonio L. Amante
Bolingbrook, Illinois

From: adam.anderson@nmfn.com
Sent: Tuesday, June 23, 2009 1 23 PM
To: Comments, Public
Subject: "FINRA Regulatory notice 09-25"

I am voicing my opinion of not needing and wanting more regulation for non-security products. This is for the most part unnecessary and a waste of our tax dollars.

Adam G. Anderson
Financial Representative
210 N. Main St., PO Box 380, Oshkosh, WI 54903-0380
Telephone: 920-235-5540 & Fax number: 920-303-4872
Email:adam.anderson@nmfn.com

From: Sue Anderson [mailto:sue.anderson.gk7s@statefarm.com]
Sent: Thursday, June 25, 2009 12:05 PM
To: Comments, Public
Subject: Requiring suitability for non- security type transactions/applications

Dear Legislators: It is hard enough being a small business owner without having to add additional work to every new account, etc. I believe that some of the proposed legislative concerns as well as those of the public are warranted, but it is not with the small business owner. I would appreciate you voting against this bill. Sincerely, Sue M. Anderson

From: terry [mailto:terry.anderson@oasecurities.com]
Sent: Wednesday, June 24, 2009 11:16 AM
To: Comments, Public
Subject: Fw: FINRA Regulatory Notice 09-25

----- Original Message -----
From: Janice
To: terry
Sent: Wednesday, June 24, 2009 9:01 AM
Subject: Re: FINRA Regulatory Notice 09-25

I have been in the Life Insurance Business for over 36 years. I am still full-time active in my profession. I have held a Securities License since 1973 and continue to help my clients with meeting their financial goals.

I cannot understand why FINRA needs to create another layer of suitability rules and obligations to all my recommendations of non-securities products. The log and suitability questions/answers that I maintain for my clients seems more than adequate. If you want to regulate someone go look at Congress! They were the ones that succumbed to lobbying pressures from the banking industry to pass the banking deregulation laws in 1999!

As I look about my office at the various compliance bulletins, folders that I maintain with incoming and outgoing communication's, Client funds log, Mutual Funds/ Variable Annuities exchange tickets and Investment Advisor quarterly reports to my Broker/Dealer. The list goes on. It's getting harder to find time to make a living helping clients. It seems that more of my time is going to administrative duties and increased overhead expenses. As I listen to my small business owners lament about the erosion of their profits because of taxation and regulation of their particular industry one could get quite depressed!

FINRA should not involve itself in non-securities activity. I respectfully disagree and thank you for letting me share my views.

Sincerely,
Terry Anderson, CLU

From: DEBORAH ANN [mailto:deborahann@q.com]
Sent: Wednesday, June 24, 2009 2:03 PM
To: Comments, Public
Subject: FINRA proposal

I would like to comment on the proposal that non-security products offered by insurance companies be brought under the same glass as securities.

As a licensed agent, who only handles fixed-rate and equity indexed annuity products, I see no reason to change the way they are regulated since these are basically insurance contracts and involve very little if any risk on the part of the client. When an annuity contract is applied for there are many pages that need to be filled out by the client outlining their financial situation, investment experience and future use of the funds before the contract is approved. Every application is reviewed for suitability and if a client's situation is such that an annuity with a fixed-rate or indexed return is going to create a future hardship or problem the application is denied and the funds are returned.

These regulations are already in place and working to make sure that the contract is in the best interest of the client. I do not see the point of adding to, repeating requirements or confusing the issue with more regulations by another department. This would not serve the client or the agent as it would slow down the application process often costing the client interest. What we have now works so lets not try to fix it with confusion.

Deborah Ann CLTC, CSA, agent
Great American Senior Benefits

From: Geoffrey Arnold [mailto:Geoffrey.Arnold@benfinancial.com]
Sent: Tuesday, June 23, 2009 2:20 PM
To: Comments, Public
Subject: Opposing Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities

I am opposed to FINRA casting its regulatory net over financial products that it is not designed to watch over. Please remove the language in your change that imposes your agency's power in areas that are not securities areas.

This proposed change will have enormous impact on people's lives. It will create requirements to qualify for federal licensing to work with products that are now state regulated. It will increase the costs of doing business, and maybe even eliminate some businesses.

Geoffrey Arnold

You know someone I can help

CA License 0G37992
UT License 305000
Mobile: 951-218-5466
Office: 951-278-5555 X311
Office Fax: 951-278-8480
495 East Rincon Street
Corona, CA 92879

From: Gene4insurance@aol.com [mailto:Gene4insurance@aol.com]
Sent: Thursday, June 25, 2009 6:52 PM
To: Comments, Public
Subject: suitability rules for non securities products

Dear FINRA:

As an insurance agent, full time, since Jan, 1979, I have seen many changes within the insurance industry. Most have been for the good. However, I now read that FINRA is considering expanding it's rules to add additional suitability requirements for non-market based insurance products. I am not in favor of this, as there are many safeguards already in place as required by current insurance regulations regarding suitability. I remember when an application for an insurance product, be it a fixed annuity or fixed life product would be from one page for an annuity, to maybe 6 pages for a life app. Now, applications are over 10 pages for a simple fixed annuity, and about 25 pages for a fixed life application. That is not including all of the required signature pages for the proposal used in the sale of said product.

What the heck is going on. You will never be able to legislate integrity, honesty, and good intent. All of the added "safeguards" that are currently in place, with more being considered, have no effect in the real world. Trust me, I have seen it all. There are agents who have no morals, no technical knowledge, or no common sense that are wonderful at completing all of the cumbersome paperwork that was designed to protect the public, and yet, the client has no idea how the proposed insurance product works, or if the product is in the final analysis, a benefit when compared to other available products.

I believe that if you really wanted to protect the public, you would set up a series of round table discussions headed by insurance sale people....real agents who have been around the block, who aren't book smart but reality stupid, who know how to SELL correctly, to evaluate, to compare, to think things through. The round table discussions should cover the realities of INSURANCE SALES. How to evaluate a clients needs...how to take data, how to ask the right questions, how to learn what the clients objectives are....etc...I could go on for hours. Anyway....stop with the new, additional requirements. The client simply signs what's put under their nose, the forms might as well be written in Latin, it wouldn't make a difference. You know it, I know you know it. Where are all the real insurance agents out there....wake up....we provide a good, honest and caring service to the public that desperately needs us....us being INSURANCE AGENTS with technical knowledge, wisdom, and honesty. We don't need more forms from the "ivory tower", written by an attorney who hasn't a clue about real insurance sales.

Thank you,

Gene R. Auriemma
Independent Insurance Agent

From: Jerry Bailey [mailto:JBaileyFinancial@pinnfirst.com]
Sent: Thursday, June 25, 2009 11:11 AM
To: Comments, Public
Subject:

I am a registered rep. with One America Securities. I have been in the financial services field for 27 years and am a life and qualifying member of the Million Dollar Roundtable. I do not agree with FINRA attempting to expand powers and oversee products that are not Securities related. We are regulated to death now. Please prosecute those who do wrong to the fullest extent of the law. However in this case, the best course of action is to stay out of business that is not Securities related.

Jerry W

Bailey,ChFC

Our industry has plenty of suitability requirements on hand. Making our jobs harder and installing an atmosphear of fear wont help our clients. It will only serve self seeking burocrats like yourselves.

William Baker

From: Beverly Barr [bevbarr@choiceonemail.com]
Sent: Tuesday, June 23, 2009 10:15 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

I'm very concerned about FINRA putting more rules not pertaining to securities on Registered Representatives who are also Insurance Agents.

For 27 plus years, I have helped clients through the use of nonsecurities by using basic fixed insurance products. Trust me when I tell you I received hugs this past year from many of them who were grateful that they lost no money in the market.

The insurance industry has been very stringent and proactive to make certain we follow all the ethics and rules for our clients.

It seems a very inappropriate time for FINRA to expand or revise current suitability requirements while Capitol Hill, the SEC and FINRA are debating similar issues.

Thank you for your attention to this matter.

Beverly R. Barr

President

Barr Associates, Inc.

Financial Services

819 E. Evergreen Rd.

Lebanon, PA 17042

717-270-9903

800-317-9861

Fax: 717-272-3755

From: Joe Bartkoski [mailto:jbartkoski@bankersinvestors.com]
Sent: Thursday, June 25, 2009 12:03 PM
To: Comments, Public
Subject: FINRA

I oppose FINRA getting expanded jurisdiction of non security investments. I believe the Insurance Industry and it's regulations will get watered down if FINRA expands into these areas. I also oppose additional regulations for its agents while debate on Capital Hill continues on standard of care from agents to there clients. Let the debate in D.C. settle first so you know what you are dealing with before any new regulations come out.

Joe Bartkoski
Financial Advisor

7001 North Oak Trafficway
Gladstone, MO 64118
(816)420-5219

From: Bartnett, David [dbartnett@finsvcs.com]
Sent: Tuesday, June 23, 2009 11:55 AM
To: Comments, Public
Subject: fimra suitability

I want to express my strong opposition to FINRAs proposal to expand their scope beyond security products. FINRA is suppose to watch over security transactions and has no business expanding into other areas.

David P. Bartnett, CLU, ChFC

From: Baughman, Tom [tbaughman@finsvcs.com]
Sent: Thursday, June 25, 2009 4:42 PM
To: Comments, Public

I am a licensed Insurance agent and registered rep and adamantly opposed to the expansion of Finra's oversight into non registered financial products. Finra should concentrate on cleaning up the Bernie Madoff's of the world and leave the tried and true financial products alone. The common man has government too involved in their lives now and don't need more government bureaucracy.

Respectfully submitted,

Tom r. baughman

From: Mark Bauman [mbauman@ameritech.net]
Sent: Friday, June 26, 2009 2:19 PM
To: Comments, Public
Subject: FINRA Regualations
Importance: High

Dear Ms. Asquith,
I am a long time member of NAIFA Cleveland. I have been in the insurance business for 22 years and I have sold both securities and non-security type products. My specialty is disability income insurance. While I understand the need for regulation and oversight in light of recent events in the financial services industry, I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Having focused on insurance products for many years, I am acutely aware that insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please accept this recommendation when considering any changes to FINRA's expansion of suitability rules – it would only hinder the flow of business and make it more difficult for us to help our clients.

Respectfully,

Mark Bauman
Union Central Life
Cleveland DI Center
3000 Town Centre Drive Suite 100
Broadview Heights, Ohio 44147

440-717-1800
1-866-735-5342 toll free
440-717-1844 fax

mbauman@ameritech.net (private)
unioncentral@ameritech.net (office)

From: bennetti5@msn.com
Sent: Thursday, June 25, 2009 12:06 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Michael Bennetti
202 Pebble Valley Dr
Dover, DE 19904-9462

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a licensed insurance agent and registered representative, I am writing to strongly object to the expansion of FINRA's suitability requirments for recommendations that do not involve securities.

While I strongly believe that anyone who promotes inappropriate or unsuitable sales or uses misleading sales practices should be prosecuted and sactioned accordingly, FINRA does not have authority over products and services which are not securities and their authority should not be expanded to oversite of products and services which FINRA does not have expertise in.

Our collective goal is consumer protection and the sale of appropriate suitable products and services. As an agent who takes this responsibility seriously, I ask you to focus on the individuals who are not following the requirments for suitable sales & service, rather than expanding FINRA's oversite and stepping on State Regulators authority of unregistered
products.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Michael Bennetti
302-678-2223

Morgan, Lewis & Bockius LLP
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Washington, DC 20004
Tel: 202.739.3000
Fax: 202.739.3001
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Morgan Lewis
COUNSELORS AT LAW

Michael Berenson
Senior Counsel
202.739.5450
mberenson@MorganLewis.com

June 23, 2009

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Regulatory Notice 09-25: Suitability and "Know Your Customer" Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

In Regulatory Notice 09-25 ("RN 09-25"), FINRA requested comment on proposed FINRA Rule 2111, a modified suitability rule for the Consolidated FINRA Rulebook. RN 09-25 "also seeks comment on whether it [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." (the "Expanded Suitability Concept")

This comment is being submitted on behalf of American Equity Life Insurance Company ("AELIC") which very much appreciates the opportunity to comment on the Expanded Suitability Concept. AELIC primarily sells index and fixed rate annuities, which are not registered with the Securities and Exchange Commission ("SEC").[1]

AELIC believes that FINRA should not adopt an Expanded Suitability Concept. FINRA currently has a well thought out, well defined line of demarcation between those activities which are subject to a member's supervision and those which are not. We are not aware, and do not

[1] We recognize that if Rule 151A under the Securities Act of 1933 withstands the current challenge in the United States Court of Appeals for the District of Columbia Circuit and goes into effect in January 2011 or sometime thereafter, the existence of the Expanded Suitability Concept will largely be irrelevant to insurance companies issuing fixed indexed annuities because the overwhelming majority of such products would be securities and recommendations concerning them would be subject to the suitability rules as currently written.

believe, that this line drawing has resulted in customers being the victims of abusive behavior for which they did not have adequate protection. Adopting an Expanded Suitability Concept would likely create a continuing series of interpretive questions as to whether the Expanded Suitability Concept applies and impose burdens on FINRA and its members which far exceed any perceived benefit for customers.

Currently, associated persons of a member are allowed to engage in outside business activities as long as, in accordance with NASD Rule 3030, the associated person notifies the member. While the associated person's obligation under Rule 3030 is fulfilled once notice is given and Rule 3030 does not require the member's consent, it is our understanding that members regularly use their position as an employer to discourage an associated person from engaging in a particular outside business activity which the member finds objectionable.

In contrast, Rule 3040 imposes a completely different regimen on an associated person's private securities transactions. The member must approve these activities, record them on its books and supervise them in the same manner it does the associated person's other activities on behalf of the member. Thus, the operation of Rule 3030 and 3040 divide these activities by associated persons into two categories, with appropriate regulation for each.

The adoption of an Enhanced Suitability Concept would blur the line and create uncertainty for both the member and the associated person. The key issue would be the meaning of "recommendations of investment products, services and strategies made **in connection with a firm's business**" (emphasis added).

For example, if the associated person is also a real estate agent, would an Expanded Suitability Concept apply to a customer's purchase of:

1) a primary residence;
2) a second home (does it matter if the second home is rented out never, 50% of the time, 90% of the time); or
3) a commercial building.

If the associated person is also a jeweler, would an Expanded Suitability Concept apply to the purchase of:

1) a high quality three caret diamond engagement ring, or
2) a bag of high quality loose diamonds.

If the associated person is also an insurance agent, would an Expanded Suitability Concept apply to the customer's purchase of:

1) a term life insurance policy;
2) a whole life insurance policy;
3) a universal life insurance policy;

4) an immediate annuity;
5) an annuity with a specific rate guaranteed as long as the annuity is held;
6) an annuity with a minimum rate guaranteed and the possibility of excess interest each year; or
7) an equity index annuity.

All of these purchases have some investment element to them, including the purchase of the engagement ring and the primary residence. Not only would it be difficult to draw a clear line, in most cases the new suitability obligation would be in addition to already existing regulation. For example, insurance agents and insurance agencies are already subject to comprehensive state regulation.[2] Real estate agents are also subject to state licensing and continuing education requirements. Jewelry store patrons are covered by state consumer protection laws.

In addition, because principals presumably would have to conclude that the non-security recommendation was suitable, principals would need training so that they could sufficiently understand the non-security product in order to evaluate a recommendation to purchase or sell the non-security. Moreover, it might be necessary to revise FINRA's testing program to ensure that associated persons and the relevant principals had the minimum knowledge levels for their roles.

In summary, we believe that there is no demonstrated pattern of regulatory abuses for which customer protections under other laws have been found inadequate. In these circumstances, adopting an Enhanced Suitability Concept would tax FINRA's limited resources by creating a steady stream of difficult interpretive questions and requiring modifications of FINRA's testing and member inspection programs and would impose a burden on its members and associated persons without sufficient offsetting additional protections for customers.

We would be happy to answer any questions you have about these comments.

Sincerely,

Michael Berenson

Michael Berenson

DB1/63120193.2

[2] We recognize that there is a difference of opinion as to the incremental benefits of adding the protections of the federal securities laws to the protections a purchaser of a fixed indexed annuity receives under state insurance regulation. However, it is difficult to assert that adding the protections of an Enhanced Suitability Concept would be a meaningful addition to the protections already afforded by state insurance regulation.

From: Bob Berz [robertberz@comcast.net]
Sent: Thursday, June 25, 2009 11:18 AM
To: Comments, Public
Cc: gsanders@naifa org
Subject: Proposed FINRA regulation of Non-securities products

As a licensed Life Insurance Agent and Registered Representative since Sept 1960, I am registering my strong opposition to FINRA extending its regulatory authority to include suitability requirements for non-securities products. There are regulations in place by the various states and suitability requirements by insurance carriers to regulate non-securities products.

Those who would abuse the suitability of non-securities products sold to the public should be prosecuted accordingly, but FINRA should not have that authority, since this is outside the securities industry and FINRA does not have the resources and expertise to regulate these matters.

Please consider my comments on this matter.

Robert S. Berz, CLU
BERZ WHITE & COOPER
407 East Fourth Street
Chattanooga, TN 37403

From: Doug Beville [mailto:Doug@profitplansllc.com]
Sent: Tuesday, June 23, 2009 11:18 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

I have been a licensed insurance agent and registered representative since 1979. I strongly oppose the above proposed Notice 09-25. I believe insurance and non registered products are well regulated without any FINRA oversight.

Doug BeVille
Profit Plans LLC
Insurance Designers of TN
www.profitplansllc.com
423.267.9729

Member of NAIFA; NAILBA; RAF

From: Blair, Debbie [Blair.Debbie@faodv.com]
Sent: Wednesday, June 24, 2009 4:09 PM
To: Comments, Public
Subject: I Oppose Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities

I am a licensed insurance agent. I am writing to you because **I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities**.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. **FINRA's authority should not be expanded to include non-securities products and services**.

Debra J. Blair

Agent

400 Lippincott Drive

Suite 110

Marlton, NJ 08053

(856) 985-2216 Direct

(888) 237-7211 Toll Free

(856) 983-0457 Fax

blair.debbie@faodv.com

From: bblaszkowski@metlife.com
Sent: Tuesday, June 23, 2009 12:09 PM
To: Comments, Public
Subject: Proposed Rules on Non-securities transactions

I've been an insurance agent and series 6 & 63 qualified for more than 20 years. Hopefully recent rulings should take care of the problems and abuse with equity index products. I do not support additional regulation of registered representatives in non-securities transactions.

My business practice involves doing an intake interview with prospective clients. (Get to know your clients!) Normally, a financial needs analysis is accomplished. However, people "shopping" for term life insurance simply do not want to take the time for a proper financial needs analysis. Same for universal life.... Perhaps you should exclude life insurance products and annuities? Varialbe life and variable annuities are scrutinized and subject to compliance reviews by the issuing company. Knowing what my clients need and want enabled me to stay in business.

Protecting the public from all adversity is a noble undertaking. The Senior Protection in Annuitiies Transaction (SPAT) affords senior citizens decent protection. However, what ever happened to personal responsibility, the capability of an individual to make informed decisions ? Scams are forever with us. The Madoff episode proves regulations do not really protect people from greed , stupidity and crafty swindlers. These clever folks are going to circumvent any rules and regulations. Why subject hundreds of thousands of honest, hard working brokers and insurance folks to more paperwork, time consuming compliance reviews and frustration for the probability of deterring a few individuals who seek to bamboozle folks into buying products with little or no economic value to the purchaser? You may want to look to scrutinizing some firms for their product development and marketing techniques rather than to the agents. Innovative products do not necessarily mean better returns for the investor.

How about better oversight and enforcement of the rules already on the books? Passing new legislation and regulations seem like "feel good" and "see what we're doing for you" actions. If you want to witness a travesty in progress review the actions of CITICORP and congress in 1999 and the recent proposal to convert government owned preferred stock to common stock.

Thanks , (these are my personal views, not those of my company)

Bronislaus Blaszkowski, CLU, ChFC, LUTCF
Financial Services Representative
Metlife
2040 W. Main St., Suite 212
Rapid City, SD 57702-2446
605-348-1778

From: Derek Bohne [derekbohne@xmission.com]
Sent: Friday, June 26, 2009 9:43 AM
To: Comments, Public
Cc: brian.urie@axa-advisors.com
Subject: FINRA regulatory notice 09-25

Dear FINRA,

I am a licensed RR and an agency manager for Farm Bureau Financial Services. I am writing to you because I **STRONLY OBJECT** to expanding FINRA's suitability obligations to recommendations that do not involve securities.

All other products are already closely supervised and regulated. And as you are aware, discussions are underway with policy makers on Capitol Hill, in the Administration, with FINRA and the SEC as well as other in the private sector which could change the way all products are regulated.

It is unwise to try to expand your authority while these discussions are being held.

Thank you for all you do in helping regulate the securities industry.

Derek

Derek D. Bohne CLU ChFC
Farm Bureau Financial Services
Salt Lake City Agency Manager
Office (801) 233-3170
Cell (801) 897-7600

From: Norm Bohnert [mailto:norm.bohnert.byz8@statefarm.com]
Sent: Thursday, June 25, 2009 4:06 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

As a licensed insurance professional and registered representative I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

There is a current debate over the issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue

NORM BOHNERT, AGENT

11624 EAST WASHINGTON STREET

INDIANAPOLIS, IN 46229

(317) 894-4440

Click Here to Visit My Site

From: Scott Bolitho [scottb@glenwoodins.com]
Sent: Tuesday, June 23, 2009 11:33 AM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I am a licensed insurance agent in the state of Colorado, as well as a Registered Representative in the se business. I am writing to let you know that I strongly disagree with the proposal to include non-securiti business in the suitability regulations currently overseen by FINRA.

We are heavily regulated by the state insurance commissioner and the NAIC already. And as it stands r FINRA has a huge responsibility overseeing the current investment industry and the new items propose Administration.

I firmly believe that the consumer should be protected from deceptive practices and that regulations sho it that we are held to a high standard. But due to the fact that we already have strict oversight, I strongly FINRA being given an expanded role to duplicate the policies that are already in place. It puts more bu FINRA and the Broker/Dealer who are not equipped to take on this additional responsibility.

Please leave FINRA's oversight to the securities industry, and the insurance oversight to the state commissioners.

Thanks,
Scott Bolitho

Glenwood Insurance Agency

Glenwood Insurance Agency
1605 Grand Avenue, Unit K
P.O. Box 1270
Glenwood Springs, CO 81602
970-384-8330 direct line
970-945-0788 fax
(800)748-2809/(970)945-9161

www.glenwoodinsurance.com

From: Pete Borowski [mailto:center4estate@embarqmail.com]
Sent: Tuesday, June 23, 2009 10:58 AM
To: Comments, Public
Subject: FINRA 09-25
Importance: High

Sirs I am a Financial Advisor with 35 years of experience in this industry. FINRA's authority should not be expanded to include non-securities products and services.

More rules don't solve anything if FINRA and the SEC choose not to regulate what rules they are suppose to now.

Bernie MiHolf's ploy was brought to these regulators attention back in 2000 and 2001 and yet they did nothing!

So enforce tell FINRA to enforce what rules they currently have. Stop looking for minnows and start supervising the elephants !

Peter L. Borowski CRFA,CSA,RHU,LUTCF.

-----Original Message-----
From: marlene@mehringerassociates.com [mailto:marlene@mehringerassociates.com]
Sent: Tuesday, June 23, 2009 5:26 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Marlene Bowen
8245 Woodbriar Drive
EVANSVILLE, IN 47715-7106

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Sincerely,

Marlene Bowen
812-474-0714

From: R BOWES [mailto:rbowes@verizon.net]
Sent: Tuesday, June 23, 2009 10:20 AM
To: Comments, Public
Subject: Request for comments on Regulatory Notice 09-25

I am a professional insurance agent and registered representative with 35 years of experience in those professions, and an responding to your request for comments on expansion of FINRA regulatory authority over activity that does not involve securities.

I strongly support regulation of products sold to the public to protect their interests, but there is no reason for FINRA to extend its activities into non-security products that already have strong regulation, such as the insurance and banking industries. If there are regulatory adjustments that need to be made in those products, then the appropriate regulatory authorities assigned those responsibilities have the knowledge and duty to decide the proper regulatory atmosphere and regulations.

To have FINRA or any other outside body get into these areas would at best add unneccesary regulatory duplication and a host of additional--and also unnecessary--burocratic requirements. At worst, it could add a substantial element of confusion in the public's mind as they also wrestle with lengthy, detailed, and perhaps contradictory paperwork as they try to satisfy competing regulations and regulators.

We all have enough hurdles and paperwork to contend with when we conform to the proper regulatory bodies' legitimate efforts to oversee nonsecurities. Professionals willingly accept these requirements in pursuit of the common goal of ensuring proper conduct in these fields. I strongly urge that you let those regulatory authorities do their work, and that you continue to focus on what the law and common sense assign to FINRA: the regulation of securities.

Richard N. Bowes, CLU, ChFC
6249 Covered Bridge Rd.
Burke VA, 22015

From: Stubox11@aol.com [mailto:Stubox11@aol.com]
Sent: Sunday, June 21, 2009 3:41 PM
To: Comments, Public
Subject: 151(a)

As a registered representative and insurance agent, I understand the concerns revolving around fixed indexed annuities. However, it is NOT NECESSARY that these insurance products be treated as securities. There is only one way to lose money on a fixed index annuity--surrender it early! Since that is a real issue, there could be additional disclosures dealing with surrender charges and penalties. There is NO NEED to treat fixed indexed annuities as securities.

There are far bigger problems that FINRA and for that matter the SEC should stay focused on. People like Bernard Madoff and others like him. Until someone actually loses money in a fixed indexed annuity due to investment results and not early withdrawal penalties, these products should remain as they are--an insurance product.

Stuart D. Boxenbaum, CFP
Registered Representative

From: Douglas Brauer [mailto:dbrauer@pacificadvisors.com]
Sent: Thursday, June 25, 2009 2:25 PM
To: Comments, Public
Cc: Ralph Sabbagh; David J Umbenhaur; Chris Lema; Austin Bennett; Ted Norton; Eugene Lee
Subject: Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities.

I am shocked that FINRA is expanding its regulatory oversight into areas it does NOT have jurisdiction. To require RRs to submit and provided suitability requirements for NON securities related business is both unfair to the RR and outside of the boundaries of FINRA.

I thought It was completely reasonable to see FINRA become involved with Equity Index Annuities, though many of my peers argued against this infringement. But now to put RRs' recommendations for NON securities related business under the authority of FINRA, goes far beyond reason. Currently there are other regulatory entities that supervise and regulate these other products and services. Those individuals who are not RRs should not be required to become RRs. The additional burden put on the backs of me and my RR peers is an unfair disadvantage to us RRs. In addition, FINRA is expanding into an area, where FINRA traditionally has not nor should not be. I find the philosophies and the planning ideas and concepts from the NON securities business often diametrically opposed to those of many Broker Dealers which do not even have a basic or clear understanding of Insurance and other NON Securities products. The idea of safety and guaranteed rate of return, life time protection, full protection, and other insurance concepts is often disregarded by many Broker Dealers as reducing the overall return for the client.

Clearly FINRA is overstepping its boundaries and should NOT continue with its plan to regulate the concerns of our client's NON securities business and decisions.

Sincerely,
Douglas M. Brauer, LUTCF

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Douglas M. Brauer, LUTCF
Registered Representative and Financial Advisor
Pacific Advisors, Inc DE
California License # 0B22243
Website address: www.pacificadvisors.com

Office: 916-223-1435 ext. 206
Fax: 916-922-2750 Primary
Fax: 916-221-9905 Direct to Email / Private (limited to 6 pages per fax)
e-mail: douglas_brauer@glic.com

Physical Address:
1900 Point West Way, Suite 222
Sacramento, CA 95815

Coming together is a beginning. Keeping together is progress. Working together is success. -- Henry Ford

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FINANCIAL SERVICES INSTITUTE

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VIA ELECTRONIC MAIL

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

RE: FINRA Regulatory Notice 09-25: Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

On May 15, 2009, the Financial Industry Regulatory Authority, Inc. (FINRA) published Regulatory Notice 09-25 seeking comment on its proposal to consolidate the existing rules governing suitability and the know-your-customer obligations into new FINRA Rules 2111 and 2090 (Proposed Rule).[1] The Proposed Rule 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. In addition, the Proposed Rule 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[2] (FSI) recognizes that combining the rulebooks of the predecessor regulatory authorities represents a significant challenge. As we have in the past, FSI commends FINRA for recognizing in the rulebook consolidation process an opportunity to develop a new organizational framework for the rules, consider new approaches to regulatory concerns, and delete obsolete rules. With so many changes in the structure and substance of the rulebook being considered, we believe industry input is more important than ever. We, therefore, praise FINRA for seeking industry comment on the Rule Proposals prior to submitting them to the SEC.

Nevertheless, FSI is concerned about the potential unintended consequences of the Proposed Rule. First, we believe the Proposed Rule has been offered for consideration prematurely. Second, we are concerned that the Proposed Rule expands the suitability obligation by introducing undefined criteria and portfolio level concerns. Third, the Proposed Rule's requirement that recommendations be based on information about the client known to the broker-dealer or associated person is both unworkable and unreasonable. Finally, we object to FINRA's suggestion that the suitability rule be applied to recommendations of non-securities investment products, services, and strategies. Our specific detailed comments are offered in this letter.

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[1] See FINRA Regulatory Notice 09-25 at http://www.finra.org/Industry/Regulation/Notices/2009/P118709.

[2] 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 119 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 12,500 Financial Advisor members.

Background on FSI Members

The independent broker-dealer (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 98,000 independent financial advisors – or approximately 42.3% percent of all practicing registered representatives – operate in the IBD channel.[3] 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.[4] 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 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 mentioned above, FSI has significant concerns with the Proposed Rule. We discuss these comments in detail below:

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[3] Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04. Please note that this figure represents a subset of independent contractor financial advisors. In fact, more than 138,000 financial advisors are affiliated with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

[4] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisors.

- Proposed Rule is Being Considered 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.[5] The resolution of this debate has the potential to make the Proposed Rule a moot point or, at the very least, alter its implications substantially. As a result, we urge FINRA to delay the Proposed Rule 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.

- Proposed Rule Inappropriately Expands Suitability to Include Poorly Defined Criteria and Portfolio Level Concerns – The Proposed Rule expands the information that must be analyzed in determining whether a recommendation is suitable for a client to include the following additional criteria:

    - Client's age,
    - Other investments,
    - Investment experience,
    - Investment time horizon,
    - Liquidity needs, and
    - Risk tolerance.

    While the client's age and other investments are specific and easily obtained data points, the other new suitability criteria are less clear or quantifiable. While independent financial advisors are accustomed to gathering detailed information from their clients and making suitable securities transaction recommendations based upon this information, introducing new undefined criteria unreasonably expands the opportunities for plaintiff's attorneys and regulators to second-guess a financial advisor's recommendations with the benefit of hindsight. We urge FINRA to plainly define the new terminology so that broker-dealers and financial advisors can fully understand their responsibilities and reasonably defend themselves in any adversarial process.

    In addition, we believe that a client's investment time horizon, liquidity needs, and risk tolerance are important considerations that must be judged at the portfolio level. However, the Proposed Rule would appear to require each securities transaction to be suitable based upon these additional criteria. We believe this would have unfortunate unintended consequences for investors who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods. As a result, we ask FINRA to clarify the Proposed Rule to state clearly that such suitability criteria are to be evaluated as part of the customer's entire investment portfolio – not on a transaction basis.

- Proposed Rule Inappropriately Expands the Suitability Review to Information Known By the Broker-Dealer – Independent financial advisors operate their own small businesses in communities throughout the country. They can compete with other financial advisors

[5] See page 71 of "Financial Regulatory Reform: A New Foundation: Building Financial Supervision and Regulation" at http://financialstability.gov/docs/regs/FinalReport_web.pdf.

who are registered with the same broker-dealer or move their business from one firm to another. As a result, it is quite possible for an independent broker-dealer's records to include information about a client that was collected by one financial advisor, but unknown to the client's current financial advisor. The Proposed Rule would appear to require independent broker-dealers to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated independent financial advisors to determine if there is other relevant suitability information "known by" the firm. Only then would the firm be certain it was meeting its obligations. This is simply unworkable and unlikely to result in a significant improvement in investor protection. We, therefore, urge FINRA to strike this requirement from the Proposed Rule.

- Proposed Rule Should Clarify the "Know Your Customer" Obligation – The Proposed Rule's "Know Your Customer Obligation" fails to define key terms and is, therefore, too vague to provide broker-dealers and financial advisors the guidance necessary to adopt policies and procedures designed to insure compliance. Proposed Rule 2090 requires members to "use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer."[6] We believe the clarity of this section would be greatly enhanced by defining the term "maintenance" so that its scope is limited to the broker-dealer's existing obligations under Securities Exchange Act Rule 17a-3.[7]

  In addition, we note that the proposed Supplementary Material states that the facts essential to knowing the customer include the customer's "financial profile and investment objectives or policy."[8] The term "financial profile" is not defined. As a result, broker-dealers and financial advisors are left to guess if FINRA intends to refer to the criteria specified in the suitability rule or something different. We urge FINRA to amend this language to refer specifically to the suitability criteria of Proposed Rule 2111 thereby eliminating any opportunity for confusion.

- FSI Opposes Expanding Suitability Requirements to Non-Security Investment Products or Services – Regulatory Notice 09-25 requests comment on whether FINRA "should propose expanding the suitability obligation to all recommendations of investment products, services, and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities."[9] The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, and contradictory regulatory requirements that do not advance the goal of investor protection. As a result, we vigorously oppose FINRA's suggestion that it expand the suitability obligations to these additional products, services, and strategies.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to enhance investor protection.

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[6] See page 9 of FINRA Regulatory Notice 09-25.
[7] 17 C.F.R. §240.17a-3.
[8] See page 9 of FINRA Regulatory Notice 09-25.
[9] See page 3 of FINRA Regulatory Notice 09-25.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

Dale E. Brown, CAE
President & CEO

From: Robin Brown [mailto:robin.brown.c290@statefarm.com]
Sent: Thursday, June 25, 2009 3:59 PM
To: Comments, Public
Subject: I oppose the Expansion of Suitability Obligations...

Gentlemen,

I am an insurance and financial services advisor. I am adamantly opposed to expansion of suitability obligations to recommendations that do not involve security products.

I believe that FINRA does NOT have jurisdiction over insurance products and services. Insurance products are regulated and safeguarded by the individual states. Adding additional requirements beyond these, is nothing but a waste of the consumer and my time and interest.

More regulations, more lawsuits, higher increased cost to the consumer.

Allow our states to regulate and guide suitability of insurance products. FINRA regulations, which I adhere too in my role, take a lot of time. Please don't burden us with more red-tape.

Robin Brown,
State Farm Insurance Agent

From: Sharon Brown [mailto:sharon.brown.cyxp@statefarm.com]
Sent: Friday, June 26, 2009 9:33 AM
To: Comments, Public
Subject: FINRA regulatory Notice 09-25

I am in complete opposition of FINRA having any governance with suitability in relation to non-securities products. With the current debate underway with all governing bodies, their should be no changes.

Thank you,
Sharon Brown, Agent
State Farm Insurance

Cleveland Sweetwater Valley NAIFA
Athens, Tn

LPL Financial

Stephanie L. Brown
Managing Director
General Counsel

One Beacon Street, 22nd Floor
Boston, MA 02108-3106
stephanie.brown@lpl.com
617 897 4340 *office*
617 556 2811 *fax*

9785 Towne Centre Drive
San Diego, CA 92121-1968
858 909 8340 *office*
858 646 0609 *fax*

June 29, 2009

BY EMAIL TO: pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
173 K Street, NW
Washington, D.C. 20006-1506

RE: **FINRA NTM 09-25:** Suitability and "Know Your Customer;" Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

LPL Financial Corporation ("LPL")[1] appreciates the opportunity to comment on proposed FINRA Rule 2111 and proposed FINRA Rule 2090. These proposed rules, if adopted, would have significant implications for independent broker-dealers such as LPL, independent financial advisors and their end clients. LPL believes certain provisions of the rules require reconsideration or further refinement. As discussed further below, LPL has specific concerns with respect to the following aspects of the proposed rules:

- Application of suitability obligations to a recommended transaction or investment strategy involving a security or securities;
- Expansion of the factors to be considered in determining suitability for a particular client and the intersection of those factors with the proposed know-your-customer standards; and
- Requirement that all information "known by" the broker-dealer be analyzed in determining suitability.

If adopted, these rules would greatly expand the scope of a financial advisor's suitability and know-your-customer obligations and would require significant changes and modifications to the policies and procedures maintained by member firms. Below, we explain the potential

[1] LPL Financial is one of the nation's leading diversified financial services companies and the largest independent broker/dealer supporting more than 12,000 financial advisors nationwide. It has offices in Boston, Charlotte and San Diego.

impact of the proposed rules and ask that FINRA consider clarifying or revising the proposals to take these concerns into consideration.

I. Application of Suitability Obligations to All Recommendations of Investment Products, Services and Strategies.

Proposed FINRA Rule 2111 applies suitability obligations not only to recommended transactions involving a security or securities but also to investment strategies involving a security or securities. This rule change raises concerns for LPL, as it is not clear how FINRA proposes to define "investment strategy." An investment strategy is generally understood to be a set of rules that serve to guide an investor's selection of an investment portfolio. How would an advisor or a firm impose suitability review in this context? Would the simple formulation of an investment strategy – even if no transactions are actually placed through the broker dealer – trigger the suitability obligations? Such an interpretation would seem to require an ongoing review by the advisor of a customer's entire investment plan in order to determine whether or not it meets suitability requirements. Furthermore, it is unclear how and when a member firm would conduct suitability reviews of such investment strategies. Limiting the application of suitability obligations to recommended transactions creates a clear trigger. For the sake of clarity and practicality, LPL urges FINRA to revise the proposed rule accordingly.

FINRA has also requested comment on whether it "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."[2] LPL opposes this broad expansion of scope. Non-securities products such as fixed annuities, life settlements, foreign exchange and commodities are already closely regulated by state and federal authorities. FINRA's proposal may create conflicting or redundant regulation for advisors and member firms and would not serve to better protect the end customer.

As you are aware, recently President Obama's administration, through the Department of Treasury, has introduced a proposal that advocates significant regulatory reform of the financial services industry. Aspects of the proposal address new customer protection requirements. Although it is difficult to predict the legislative outcome of the Treasury's proposal, it appears to be an inopportune moment to expand the scope of products or services subject to suitability review by member firms.

We suggest further analysis of this aspect of FINRA's rule consolidation and would gladly participate in a task force or committee organized to evaluate the topic.

II. Expansion of Suitability Factors and Intersection with "Know-Your-Customer" Obligations.

Proposed FINRA Rule 2111 and Proposed FINRA Rule 2090 combine to expand the amount of information required to be gathered from the end customer in order to open and maintain a customer account and to make suitability determinations. Proposed FINRA Rule 2111 requires that suitability be based upon facts known by the member or advisor or disclosed

[2] FINRA RN 09-25, "Suitability and 'Know Your Customer,'" May 2009.

by the end customer in response to the member's or advisor's efforts to obtain the information. The proposed rule expands the list of elements required to be addressed when gathering information to include investment experience, investment time horizon, liquidity needs, risk tolerance and other investments. Proposed Rule 2090 requires that when opening and maintaining customer accounts, members must "know (and retain) the essential facts concerning every customer..." For purposes of the rule, the essential facts "include the customer's financial profile and investment objectives or policy."

LPL does not believe that the addition of the new elements in proposed FINRA Rule 2111 serves to protect the end customer; in fact, the application of this proposed rule may negatively impact the end customer's goals. Factors such as one's investment experience, time horizon and risk tolerance are ones to be considered when reviewing a customer's portfolio as a whole. However, they are not necessarily factors that need to be considered when reviewing each and every trade of individual securities. By imposing a requirement that advisors consider these "portfolio level" factors when making specific trades, FINRA would prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk and time horizons. Furthermore, the requirement that a firm or advisor collect information regarding a customer's "other investments" is simply untenable. This would seem to suggest that in order to meet suitability standards, firms and advisors would be required to have a complete view of a customer's entire portfolio – including any positions that are held at other firms. For all of these reasons, LPL opposes the addition of these new factors and urges FINRA to modify Proposed Rule 2111 accordingly.

In addition, LPL requests that FINRA clarify the language in proposed FINRA Rule 2090. Specifically, what does FINRA mean when it requires that members know each customer's "financial profile?" Does the term "financial profile" refer to the new elements that FINRA has included in proposed FINRA Rule 2111? If so, this would imply that each of these new elements would be required to be collected when opening of a customer account. It is critical that FINRA clearly explain its intentions, as the requirement to collect additional information upon account opening would have a material impact upon the operations and compliance functions of member firms.

Finally, LPL requests confirmation from FINRA that even if a customer refuses to provide certain information as required under proposed Rules 2111 and 2090, a member may still open the account so long as it has used due diligence to obtain such information. If this point is confirmed, we would then request clarification as to what FINRA would require from a documentary perspective to show that due diligence has been performed.

III. "All Facts Known" Threshold.

In addition to requiring the gathering of specific information as discussed in Section II above, proposed FINRA Rule 2111 also prescribes a significant change regarding the use of customer information as part of the suitability analysis. Whereas previously, the information required to be analyzed when determining whether a recommendation is suitable would include just the information disclosed by the customer in response to the advisor's reasonable efforts to

obtain such information, the proposed rule now requires that the advisor consider information about the customer that is "known by the member or associated person."

LPL is opposed to this new requirement, as it creates an obligation that is simply untenable in practical application. An advisor can only base his or her knowledge of a customer upon the information provided by the customer through the specified policies and procedures of such advisor's firm. LPL therefore opposes the adoption of this aspect of the proposed rule.

IV. Cost Implications and Implementation Period

Finally, LPL would like to note the significant cost implications for all broker-dealers that would be triggered by these rule proposals. Implementing such an expansion of the suitability and know-your-customer requirements (particularly if such standards were to apply to sales of non-securities) would require additional staffing and system enhancements, all of which would come at a substantial expense. For example, new account documentation would need to be revised to reflect additional suitability criteria. In many firms, including LPL, the customer's financial and other suitability information is provided in paper form and electronically. Systems would need to be updated, and the corresponding surveillance tools used by many firms would also require adjustment. Consequently, should any of these rule proposals be adopted, LPL would urge FINRA to incorporate an adoption period of no less than twenty-four months to give member firms time to update necessary forms, systems, policies and procedures.

V. Conclusion

LPL appreciates the opportunity to comment, and we thank you for your consideration of our concerns. Should you have any questions, please contact me at (617) 897-4340.

Sincerely,

Stephanie L. Brown

Stephanie L. Brown
Managing Director, General Counsel

From: Gloria Bruner [mailto:gloria@pharesfinancial.com]
Sent: Tuesday, June 23, 2009 11:11 AM
To: Comments, Public
Subject: Regs

Dear Ma'am/Sir:

The Insurance industry is a highly regulated industry already. The state government does a very good job of this already. In the area of securities, FINRA would have enough regulation of securities and does not need to regulate the insurance side. Maybe if they stick to that, it will get done especially after this last fiasco. Thank you for your time and your due diligence on this matter.

Sincerely,

Gloria J. Bruner, LUTCF
Phares Financial Services, Inc.
320 McNeel Lane
PO Box 986
North Platte, NE 69103-986
308-532-3180
800-616-3180

From: GC Bryan [mailto:gbryan@libertyagency.com]
Sent: Wednesday, June 24, 2009 10:20 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Ms. Asquith,

In regards to FINRA considering adding "Securities" suitability obligations to non-security products; seems to me that FINRA would be concerned about cleaning up their on house before they try to move over to some else's house to clean it up.

How would FINRA like for the Department Of Defense to move over to your headquarters and try to start imposing rules that are of their own making knowing full well they have no jurisdiction over FINRA's business. It makes no sense whatsoever. You folks have enough to do to take care of security violations and violators

Let the states police their territorial business and you folks stay in Washington DC and try to get it cleaned up. They have done a great job of policing the insurance industry and taking care of insurance violations and violators. Good luck with taking care of securities violations and violators.

Sincerely,
Grover C Bryan Jr.
Licensed Insurance Agent
Bladenboro, NC

From: Yvonne G. Bryant [mailto:ygbryant@ipass.net]
Sent: Tuesday, June 23, 2009 12:51 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I am a licensed insurance professional (but not a registered representative) and I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

It goes without question that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and FINRA's authority should not be expanded to include non-securities products and services.

I can assure you that insurance and other non-securities products in my state and elsewhere are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products can have the unintended consequences of creating more confusion and not achieving the goal of consumer protection.

I thus urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Oversight of these products should be left to state insurance departments.

Thank you for your time.

Regards,
Yvonne Bryant

From: Steven Buchanan [steven.buchanan@ncfbins.com]
Sent: Monday, June 29, 2009 10:51 AM
To: Comments, Public
Subject: FW: "FINRA Regulatory notice 09-25"
Attachments: image003.jpg; image001.jpg

From:
Sent: Monday, June 29, 2009 7:39 AM
To: 'pubcom@finra.org'
Subject: "FINRA Regulatory notice 09-25"

I am opposed to the continued focus on more and more requirements for insurance agents who are trying to assist their clients with needed products.

It is difficult to understand the continued scrutiny of one of the few solvent businesses in a completely dysfunctional economy. This scrutiny is even more difficult to understand when one realizes that others in the investment industry like brokers and "financial???" advisors are given continued freedom with limited reporting requirements. I personally cannot even get a poor excuse for a broker to return my calls. I would lose my securities license if I acted this way with no warning. Please let us live with the heavy reporting requirements we already endure with the heavy burden we have been given for extreme paperwork and focus on the Madoff and others out there that have been given a license to steal and others who continue to take advantage of the citizens of our country with very limited suitability requirements.

Steve Buchanan

LUTCF

FARM BUREAU INSURANCE

1337 E Garrison Blvd Gastonia NC 28054

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Mobile: 704.965.4565

Email: steven.buchanan@ncfbins.com

-----Original Message-----
From: John Burlingame [mailto:jburlingame@farmersagent.com]
Sent: Thursday, June 25, 2009 4:22 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am a licensed insurance agent in the state of New Mexico. I'm writing you because I object to expanding FINRA's obligations to products that do not involve securities.

FINRA's authority should not be expanded to include non-securities products and services.

Insurance and other non-securities products are already subject to regulation at the state level. The states have done a good job of overseeing these products.

I urge you not to expand FINRA's obligations to include products that do not involve securities.

Thank you for considering my views on this issue.

John Burlingame
505-884-5996

From: Terry L. Bohannon [terryeps@bellsouth.net]
Sent: Monday, June 29, 2009 5:42 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

As a licensed insurance professional and registered representative I am writing as I strongly object to FINRA expanding suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over other products and services. Neither FINRA nor Broker Dealer firms have any expertise in these other fields.

The states are already regulating the other areas and heaven forbid the confusion of FINRA's new layers.

The debates underway by all parties need to be well settled before such major expansion should ever be considered.

Thanks,
George E. Burnette CLU, ChFC

-----Original Message-----
From: wcaffrey@aicinvest.com [mailto:wcaffrey@aicinvest.com]
Sent: Thursday, June 25, 2009 10:46 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Wanda Caffrey
P O Box 5865
Lincoln, NE 68505-0865

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I thoroughly believe that individuals who make unsuitable recommendations should be sanctioned. Individuals who are not securities licensed should not be making recommendations regarding any securities product.

I would point out that insurance products like Fixed Indexed Annuities are not a securities product and only securities products are regulated by FINRA. Insurance products and agents are regulated by State Insurance Depts. The rules regarding securities products and insurance products can be quite complex and I think it is most appropriate that each be regulated by their own agencies and not FINRA alone.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Wanda Caffrey

From: Tony Cammack [mailto:tonycammack@cablelynx.com]
Sent: Thursday, June 25, 2009 4:02 PM
To: Comments, Public
Subject: Regulatory Notice 09-25 unnecessary

Dear Sirs: I am a licensed insurance salesman in Longview, Texas. Your Regulatory Notice 09-25 is unnecessary and I strongly object to it because you do not have any authority over non-securities, therefore you should not be making up rules for non-security products. Secondly, these products already are being regulated very well by the state insurance departments of each state. Also, our Congress Men and Women, the SEC, you, and others are already looking together at the standards which advisors should be treating their clients moving forward. there is no reason for you to jump ahead of everyone else until all groups have their say. Thanks for your consideration of my ideas. I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Tony Cammack, CLU, ChFC.

From: Mark Cannon [mailto:mark.cannon.bxfh@statefarm.com]
Sent: Tuesday, June 23, 2009 10:32 AM
To: Comments, Public
Subject: RE: Suitability Obligations

I strongly oppose the expansion of FINRA's suitability obligations that do not involve securities.

Mark

Mark Cannon Insurance

Owner/Agent for 36 years

Lakeland, FL

-----Original Message-----
From: Michael N Carney [mailto:mcarney@lifetimefinancialgrowth.com]
Sent: Thursday, June 25, 2009 2:21 PM
To: Comments, Public
Subject: Proposed Expansion of Suitability Obligations that do not involve securities

I'm writing to oppose the above expansion of regulations. I've been a licensed agent since 1981 and I don't see where there needs to be oversight by FINRA for recommendations that do not involve securities. I believe that there are enough regulations in our side of the business from the State level. Please reconsider adding more! Most of us are hardworking , honest people trying to do the best thing for our clients. I'd appreciate it if you don't make it more difficult.

Mike

Mike Carney
Director of Disability Insurance Sales
Luttner Financial Group
244 Boulevard of the Allies
Pittsburgh, Pa. 15222

412 391 6705 x 239
888 534 7663 x 239
412 201 2902 Fax
412 860 1205 Cell

From: THOMAS D CARSTEN [mailto:TDCARSTEN@FT.NEWYORKLIFE.COM]
Sent: Wednesday, June 24, 2009 11:47 AM
To: Comments, Public
Subject: FINRA's suitability standards

I strongly object to expanding FINRA's suitability obligations to products that are not securities.
I was a recruiter in this industry for 3 years recently and found that due to the heavy regulation and compliance issues, many of the new people looking to join this noble undertaking of helping people make informed decisions about their money that they feel good about is too difficult and time consuming for many people already in the business and those looking at getting in. They are choosing different career paths. After serving people in this industry for over 27 years now, much of the good work that we do protecting families and businesses will NOT GET DONE if we have to spend any more time doing paper work and fulfilling government regulations.
I agree that those who engage in this business and don't put the clients needs at the uppermost of importance should be aggressively dealt with. The rules and regs we have for the non-securities products are already regulated by state and other entities that are doing a good job. You can not regulate morality. No matter how tight you want to make the rules, if someone wants to do harm in some way, they will figure out a way. They need to be brought down. Those of us trying very hard to serve people with their needs do not need, nor can we afford more regulation that takes us away from serving the need of our public. Please allow those of us in the industry, who try to do the RIGHT thing every day to continue to help those who need us. Most of what we do to help the overall financial picture of this country would not get done without us out here in the field. We can not afford more time to conform to more regulators and rules that don't need to be implemented. PLEASE..... Tom

Tom Carsten, CLU, ChFC
Financial Services Professional
2525 W Main Suite 217
Rapid City, SD 57702
Phone (605) 343-6565
Fax (605) 343-3952
Registered Representative offering securities through NYLIFE Securities LLC (Member FINRA/SIPC 6000 East 2nd Street Ste. 2001, Casper, Wyoming 82609. (307) 266-1485

June 29, 2009

VIA E-MAIL
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-25: "Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations"

Dear Ms. Asquith:

This letter is being submitted on behalf of the Association for Advanced Life Underwriting ("AALU"). AALU is a nationwide organization of life insurance agents, many of whom are engaged in complex areas of life insurance such as business continuation planning, estate planning, charitable planning, retirement planning, deferred compensation and employee benefit planning. AALU represents approximately 2,000 life insurance agents and financial advisors nationwide.

AALU is pleased to have the opportunity to offer its comments in response to the request by the Financial Industry Regulatory Authority ("FINRA") in Regulatory Notice 09-25 for comments on proposed consolidated FINRA rules governing suitability and know-your-customer obligations.

AALU appreciates FINRA's work in consolidating current rules. However, in response to FINRA's request for comments about whether, in the future, FINRA should consider proposing that such rules be extended to non-securities products, AALU strongly opposes this extension.

In addition to there being serious questions whether FINRA has the authority to take such a step, this action seems unwise and potentially harmful. If oversight were to extend beyond securities, the scope could be extremely broad—involving banking, loans, non-securities life insurance products, and many other arenas. Broker-dealers and FINRA lack the expertise and resources to make such oversight practical or helpful to customers. It would also create the potential that FINRA could make judgments that conflict with those of regulators which have very extensive information, resources, rules and expertise to oversee the use of non-securities products, such as the extensive state structure for insurance regulation. Finally, extending FINRA and broker-dealer oversight to non-securities products would likely decrease the level and quality of consumer protection for securities products. In light of the above, AALU believes that extension of FINRA and broker-dealer oversight to non-securities products would detract from, rather than enhance, consumer protection.

Please contact Tom Korb, AALU Vice President of Policy & Public Affairs, at 703-641-8120, if we can provide further information or input.

Respectfully Submitted,

Robert R. Carter, CLU, ChFC
AALU President

David J. Stertzer, FLMI
AALU CEO

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F: 202-742-4479

MADDOX HARGETT & CARUSO, P.C.

Representing Investors

Mark E. Maddox[2]
Thomas A. Hargett[1]
Steven B. Caruso[3]
Thomas K. Caldwell[5]
Keith L. Griffin[1]
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9853 Johnnycake Ridge Rd.
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Mentor, OH 44060
440.354.4010
440.848.8175 fax

VIA EMAIL TRANSMISSION

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Re: Comments to Regulatory Notice 09-25

Dear Ms. Asquith:

The purpose of this letter is to provide the Financial Industry Regulatory Authority, Inc. (FINRA) with comments on the above referenced Regulatory Notice which was released for public comment by FINRA on or about May 18, 2009.

I am an attorney whose practice is exclusively devoted to the representation of public investors in their disputes with the securities industry.

Moreover, I am a current member of FINRAs National Arbitration and Mediation Committee and a past President and a current member of the Board of Directors of the Public Investors Arbitration Bar Association.

Comments on Proposed Rule 2111: Suitability

The proposed rule noticeably lacks any definition and/or explanation of what constitutes a "recommendation." While it is presumed that the insertion of the term "investment strategy" into the suitability rule would encompass those situations where a member firm and/or associated person recommends the purchase, sale and/or retention of a security, this presumption can be solidified if either the rule itself or the interpretative material that is associated with the same were to be revised so as to incorporate NYSE Rule 472.10 /09 which defines a recommendation as "...any advice, suggestion or other statement, written or oral, that is intended, or can reasonably be

expected, to influence a customer to purchase, sell ***or hold*** a security" (emphasis added).

Comments on Proposed Rule 2090: Know Your Customer

The proposed rule noticeably lacks any specificity as to whether the obligation to "know (and retain) the essential facts concerning every customer" would be required to be documented in writing by the member firm which is a material omission that needs to be rectified.

Furthermore, the proposed rule noticeably omits the language from NYSE Rule 405 that requires a broker to use due diligence to learn the essential facts relative "every order, every cash or margin account," in addition to the information relating to the customer. It should be noted that the omission of this critical language would appear to constitute a significant reduction of the long-standing and well-recognized obligations of member firms and/or associated persons to "know their product" before recommending the same to their customers and, accordingly, would undermine the protection of the investing public.

Thanking you, in advance, for the opportunity to have provided you with my comments on this matter, I remain,

Very truly yours,

Maddox Hargett & Caruso, P.C.

s/ Steven B. Caruso

Steven B. Caruso

From: Castle, Glen [glen.castle@westernsouthernlife.com]
Sent: Wednesday, June 24, 2009 1:43 PM
To: Comments, Public
Subject: Regulatory notice 09-25 Opposed

I have been in the life insurance and annuity business for 32 years with the same company. I am licensed series six also for the past twelve or so years. I agree with federal regulation of securities, but not fixed annuity products. I think that it should be on a state basis handled by the department of insurance through a suitabilty requirement statement. I don't see any reason to expand FINRA.
For this reason I do not support 09-05.
Thank you.
Glen T. Castle CLU, ChFC. LUTCF

The International Association of Small Broker Dealers and Advisors

1620 Eye Street, NW, Suite 210 Washington, DC 20006

202-785-8940 ext. 108

pchepucavage@plexusconsulting.com

www.iasbda.com

The International Association of Small Broker-Dealers and Advisers,www.iasbda.com submits the following comments on the above referenced proposal. The proposal comes in the middle of a larger debate over whether all financial advisers should have a fiduciary duty to their customers and we do not understand the value of considering these changes outside of this broader context.

See
http://registeredrep.com/newsletters/wealthmanagement/fiduciary_sifma_fpa_ici_standard_of_care0411/
Furthermore we believe that the recommendation aspect of suitability has lost its meaning in the context of modern investing and communications technology. We believe the notice should at least ask for comment on this aspect of the rule especially in view of the fiduciary duty debate. We wish to make the following observations in this regard.

Retail investing through the internet should not be subject to any suitability test because of the objective absence of a recommendation.

Retail investing that occurs through a communication between an rr and customer has an implied recommendation because most customers believe their rep has a fiduciary duty. Unlike the waiver proposal for institutional customers, few firms are willing to ask their retail customers for such a waiver or to tell them that they take no responsibility for the trades discussed. There is no public interest served in having a debate over whether a trade was the firm's idea or the customer's idea or a combination resulting from an honest inquiry.. Our experience has been that there are very few big suitability cases brought but this discussion would be informed by discussing those brought over the last 15 years. The public interest will be served when an rr questions an unsolicited trade and in some cases refuses to execute it precisely because he knows the customer.The best demographic example is the 85 year old investor who likes to trade his account when the rep knows from the know your customer rule that he has limited assets and limited time with probable large health costs ahead of him. We believe that suitability must apply regardless of whether a recommendation occurs unless the trade is an internet trade. But we also believe that firms especially small firms need protection from unscrupulous customers and overly aggressive regulators. The SEC sets out an investment adviser's fiduciary duty as follows:

As an investment adviser, you are a "fiduciary" to your advisory clients. This means that you have a fundamental obligation to act in the best interests of your clients and to provide investment advice in your clients' best interests. You owe your clients a duty of undivided loyalty and utmost good faith. You should not engage in any activity in conflict with the interest of any client, and you should take steps reasonably necessary to fulfill your obligations. You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients. Generally, facts are "material" if a reasonable investor would consider them to be important. You must eliminate, or at least disclose, all conflicts of interest that might incline you - consciously or unconsciously - to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict. You cannot use your clients' assets for your own benefit or the benefit of other clients, at least without client consent. Departure from this fiduciary standard may constitute "fraud" upon your clients. As an investment adviser, you are a "fiduciary" to your advisory clients. This means that you have a fundamental obligation to act in the best interests of your clients and to provide investment advice in your clients' best interests. You owe your clients a duty of undivided loyalty and utmost good faith. You should not engage in any activity in conflict with the interest of any client, and you should take steps reasonably necessary to fulfill your obligations. You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients. Generally, facts are "material" if a reasonable investor would consider them to be important. You must eliminate, or at least disclose, all conflicts of interest that might incline you - consciously or unconsciously - to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict. You cannot use your clients' assets for your own benefit or the benefit of other clients, at least without client consent. Departure from this fiduciary standard may constitute "fraud" upon your clients (under Section 206 </cgi-bin/goodbye.cgi?www4.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00000080---b006-.html> of the Advisers Act).

We believe that most brokers already believe that they meet this standard and are proud to do so. But there may be some unknown implications when this standard is applied to brokers who are not registered investment advisers. Therefore we believe that this standard would be most closely duplicated by eliminating the recommendation requirement for suitability as discussed above, once a broker enters into a conversation with a client for whom he has performed a know your customer analysis as he is required to do. While this would be a significant change from current practices it could be phased in for smaller investors defined as those with less than $100,000 at the firm. These customers do not generate significant income for the firm but are arguably the most vulnerable to unsuitable investments. These customers are also often referred to a call center by the large firms where a robust suitability analysis may not take place. By insisting that the firms know these customers from the onset of contact,Finra may place them in a vulnerable situation by continuing the recommendation aspect of the suitability analysis. It essentially says that no matter how dangerous or ill-advised the investment is,

the firm is free to execute it. Thats not a consumer protection policy the industry needs to continue or be proud of.

Peter J.Chepucavage
General Counsel
Plexus Consulting LLC
1620 I ST. N.W.
Washington,D.C.20006
202-785-8940 ex 108
www.plexusconsulting.com
www.iasbda.com

From: Jake Chesney [mailto:Jake@JakeChesney.com]
Sent: Thursday, June 25, 2009 4:48 PM
To: Comments, Public
Subject: request

Please don't expand FINRA, I have had a nice 8 year career in this industry, and am feeling pushed out due to over-regulation...

Jake

Owner/Registered Rep - Chesney Financial Network
www.JakeChesney.com

Board Member - Triple Threat Mentoring
www.TripleThreat.org

630 - 606-1457 (phone)
630 - 566 - 1615 (fax)

Office of the Corporate Secretary-Admin.

JUL 16 2009

FINRA
Notice to Members

New York Life Insurance Company
100 Witmer Road, Suite 100
Horsham, PA 19044
Bus. 215 441 3241 Fax 215 441 3242
Toll Free 800 776 8373

Ernest A. Chletcos
Peter E. Chletcos
Georgia I. Chletcos, LUTCF, CLTC
Agents

The Company You Keep®

June 23, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

Re: " FINRA Regulatory Notice 9-25"

Dear Ms. Asquith:

I am a licensed insurance professional who has been selling life insurance to my clients for over 63 years. I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Let me clearly state, I firmly believe people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services, which are not securities and they do not have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Another reason why the expansion of FINRA's suitability obligations is unwise, is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements, which would detract from the goal of consumer protection.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for considering my views on this issue.

Sincerely,

Ernest A. Chletcos

Ernest A. Chletcos
Agent

From: ciapet@wowway.com
Sent: Wednesday, June 24, 2009 11:35 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Marlene Ciapetti
14121 Revere Circle
Middleburg Heights, OH 44130-7033

June 24, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a licensed insurance professional and registered representative. I am writing to you because it would be detrimental to expand FINRA's suitability obligations to recommendations that do not involve securities.

While I firmly believe that representatives who promote unsuitable sales and engage in misleading sales practices should be reprimanded and subject to meaningful sanctions, broker/dealers are already overwhelmed with regulations relating to securities. Further, they are understandably prejudice towards security products and lack the product knowledge to effectively assist the consumer relating to non-security products. A representative who is diligently doing their homework and in touch with the client's needs is able to make a non-biased recommendation consistent with the client's needs and risk tolerance. FINRA does not have jurisdiction over products and services which are not securities and should not have such jurisdiction, as they also lack the product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. Mass confusion will result and the goal of consumer protection will be lost or diminished at best.

It is my understanding that policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe their clients.
While these groups are considering whether such standards should be expanded or changed going forward, it would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please do not let the goal of consumer protection get lost in the bureaucracy. I urge you NOT to

expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for considering my views on this issue.

Sincerely,

Marlene Ciapetti

From: Lorry [mailto:Lorry@ciporkincare.com]
Sent: Tuesday, June 23, 2009 11:41 AM
To: Comments, Public
Subject: Oppose FINRA Supervising Non-Security Products

I am opposed to FINRA taking jurisdiction over non-security type products.

Lorry Ciporkin

2700 W. Cypress Creek Rd. #B110
Ft. Lauderdale, FL 33309
954-973-8001

From: Larry Clayton [mailto:lclayton@cfhfinancial.com]
Sent: Wednesday, June 24, 2009 9:53 AM
To: Comments, Public
Subject: Suitability on non-security insurance products.

Gentlemen:

I received notice my professional association concerning FINRA placing suitability requirements on non-security products. I strongly oppose such requirements.

I truly believe that we do not need any additional federal regulations or FINRA requirements concerning suitability.

Respectfully,

Larry C. Clayton, CLU, ChFC, AEP

Larry C. Clayton, CLU, ChFC, AEP
CFH Financial Services, Inc.
5050 Poplar, Suite 1204, Memphis, TN 38157
901.761.1490
Securities and Investment Advisory Services offered through
Capital Analysts Incorporated: Member FINRA/SIPC

From: Kris Cloyd [mailto:cloyd@profitisgood.com]
Sent: Friday, June 26, 2009 10:23 AM
To: Comments, Public
Subject: Rule 2111

I strongly oppose your expansion of Rule 2111. FINRA should focus on security transactions and keep out of all non-securities, services and strategies. You already have enough requirements relating to suitability requirements. There is no need for you to have oversight in such things as insurance recommendations, income tax preparation, estate planning, and more. Keep your focus on the securities business and clean up our industry before you even consider going into industries where you do not have the expertise.

Kris Cloyd

From: G.Ted.Coene@Thrivent.com [mailto:G.Ted.Coene@Thrivent.com]
Sent: Tuesday, July 21, 2009 1:09 AM
To: Comments, Public
Subject: FINRA Proposed new rule on suitability.

FINRA: We do need more regulation, actually we would be better off with more honorable, principled people serving as financial advisors. The regulation in effect now is so extensive in the number of forms we ask people to sign that they are meaningless. To extend securities regulation to non-securities such as insurance and banking would in my opinion be a dis-service to the American People you are charged with protecting. Let the insurance regulators handle that arena and the banking regulators that domain. These business are different have different objectives, different motivations and different people and require different education and skill. Legally trained people can't handle everything. Review the Madoff scandal and ask what went wrong and if more regulation would have solved the problem. To depersonalize them further would be a huge costly mistake even though the costs would be indirect.. I urge you to rethink and consult with knowledgable people at the working levels, not the top people who are removed from the action, yet think they really know what is going on.

G Ted Coene, FIC, LUTCF
Financial Associate
Pacific Southwest Region
CA Insurance ID No.: 0741210

420 Camino de Encanto, Redondo Beach, CA 90277
Office: 310-378-1201
Fax: 310-373-2041
Cell: 310-991-2636
Email: g.ted.coene@thrivent.com

-----Original Message-----
From: Steve Colson [mailto:stevecolson@ofgfinancial.com]
Sent: Wednesday, June 24, 2009 10:50 AM
To: Comments, Public
Cc: 'Todd M. Payne'
Subject: "FINRA Regulatory notice 09-25"

Attn: Marcia E. Asquith, Office of the Corporate Secretary, FINRA:

I am a licensed insurance professional and registered representative. I am writing to you because I STRONGLY OBJECT to expanding FINRA's suitability obligations to recommendations that Do Not involve securities. I urge you NOT to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Sincerely,
Steve

Steven C. Colson, ChFC, CSA, LUTCF
Executive Financial Services
2553 Texas Ave So., Suite A-1
College Station, TX 77840
Email: stevecolson@ofgfinancial.com
Website: http://www.efsfirm.com

(979)680.0658 x14 phone
(979)680.9552 fax

Securities offered through OFG Financial Services, Inc., 120 SE 6th Ave.
Townsite Plaza #2, Ste. 105, Topeka, KS 66603 ph(785)233-4071

From: Bill Conley [bill.conley.jdt1@statefarm.com]
Sent: Thursday, June 25, 2009 6:05 PM
To: Comments, Public
Subject: Expansion of FINRA oversight

To whom it may concern,

I have been involved in the insurance industry for over twenty years and the securities industry for ten years.
I personally am opposed to any attempted federal intervention into the oversight of traditional life insurance products.

These products have been overseen at the state level successfully for many years. In fact to date, in my state of Virginia, not one policyholder has ever lost a penny of funds from the cash value in their life insurance. This is an amazing track record and one the state regulators and companies involved can be proud of.

Thank you for your diligence in overseeing the securities market. Perhaps a review of these regulations would be in order, since someone like Bernie Madof can still operate in the open with such impunity. I am all for FINRA having the right tools to catch perpetrators like him more easily, but please leave the well regulated, separate industry of life insurance to the state overseers. Let's not scuttle a boat that has always been seaworthy.

Respectfully, Bill Conley

Bill Conley, Agent
A State Farm Insurance Companies ®
Providing Insurance and Financial Services
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CLEVELAND, TN 37312 OFFICE 423-476-4576 FAX 423-476-4436

June 25, 2009

Office of the Corporate Secretary-Admin.

Marcia E Asquith
1735 K Street NW
Washington, DC 20006-1506

JUL - 1 2009

FINRA
Notice to Members

Subject : FINRA Regulatory Notice 09-25

Dear Ms.Asquith,

I am a tewnty-six year property and casulty agent who had a securities license for a number of those years.

The proposed regulation to expand FINRA's scope of regulations to include non-securities issues is akin to " chasing flies with a sledge hammer ". In an effort to overhaul the nations securities and insurance industries, regulators appear to be firing at all targets and hitting almost none.

The vast majority of insurance agents and financial advisors in America are honest folks who are putting their client's interest first. They perform daily to the moral and ethical standards set by their industries and associations.They ARE NOT responsible for the current meltdown. You already know who the culprits are.

My clients TRUST me and my staff to recommend the appropriate products to meet their needs and individual situations. We must therefore work constantly to earn and keep their trust and goodwill. Little else matters.

The expansion of FINRA'S authority will not alter or improve my client's financial security, nor will it improve the way we treat our clients. America's financial institutions and their regulators lost the basis of ALL interpersonal relationships - trust. The causes are myriad and the experts are still performing the postmortum, but regulating every possibility for potential loss is not going to make the client any safer.

I am totally opposed to Notice 09-25.

Buell Connell, Agent - State Farm Ins.Cos.

From: Bob Coode [recoode@smcofinancial.com]
Sent: Thursday, June 25, 2009 12:49 PM
To: Comments, Public

Dear Ms Asquith,
I am a 35 year insurance industry veteran and long time member of NAIFA in Cleveland. We simply do not any additional regulations in our industry as it relates to non securties transactions. We are already subject to comprehensive regulations on a state by state bases and I see nothing but conflicts if FINRA continues down the path that it is going. Please reconsider your position on this topic. Thank you.

P.S. Just a reminder to all our valued clients, we will always extend the courtesy of a free consultation to any family, friend, or business associates who are going through major life transitions (i.e. Retirement, changing jobs, selling a business, or losing a loved one). Please give us a call if we can be of assistance.

Bob Coode, CSA
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To Whom It May Concern:
I am completely behind FINRA in its approach to changing the suitability standards for our industry. For too long, too many sales have been based on questionable suitability only so the rep can make a commission. In my practice, I see insurance only licensed agents making "suitable" recommendations for indexed annuities by recommending that they liquidate existing securities. The problem, they have neither the license or in many cases the experience required to make these kinds of recommendations. But, since they aren't licensed for securities, no one is regulating their recommendations. Let's level the playing field and make it so that if someone is going to make a recommendation on existing securities, we take away the loophole that let's them do it without the proper licenses or experience.

For demographics, I am 62 and have been in the industry since 1974.

Phillip M. Cook, CFP®, CLU
The Merlin Group

From: Copeland, Tim [Tim.Copeland@vafb.com]
Sent: Thursday, June 25, 2009 11:11 AM
To: Comments, Public
Subject: Suitability proposals

To whom it may concern:

I am a career licensed agent, 29 years, and registered representative.

I am writing you today to oppose any further regulation regarding suitability guidelines being proposed on non-security related products. There are laws and sanctions already in place to regulate that industry and FINRA needs to pay closer attention to the securities industry and characters, such as Madoff, who weren't being watched as closely as they should have been.

Get your own house in order to properly regulate the securities industry and leave the non-securities regulation to the state insurance commissions that already have regulation in those matters.

Keep Smiling,

Timothy J. (Tim) Copeland, LUTCF
Agent
Virginia Farm Bureau Insurance
(o) 757-934-2321
(f) 757-934-8709

607 W. Washington St.
Suffolk, Virginia 23434-5756
VirginiaFarmBureau.com

From: Maxwell Coulliette [mailto:mcoulliette@ifadv.com]
Sent: Monday, June 22, 2009 12:32 PM
To: Comments, Public
Cc: Maxwell A. (Max) Coulliette CFP CLU ChFC
Subject: Notice 09-25

RE . Regulatory Notice 09-25

Suitability and "Know Your Customer"

Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligation

I believe there should be more scrutiny of Indexed annuity and Indexed life sales. I have seen these products sold as investments by non RR's making it sound like you would get participation in the market with none of the down side risk and no cost for this benefit. I have also seen them sold to a 79 year old who had no idea there was a CDSC of 10 plus years. Some indexed annuities are structured to benefit the client but some just pay high commissions to the producer.

No matter what the insurance companies do these products when sold without supervision by non RR producers **will** present suitability problems.

Max Coulliette
Maxwell A. Coulliette, CFP, CLU, ChFC
President
Intermountain Financial Advisors, Inc.
6995 S. Union Park Center, Suite 410
Midvale UT 84047

Office (801) 676-1500 ext. 101
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-----Original Message-----
From: wcox@finsvcs.com [mailto:wcox@finsvcs.com]
Sent: Friday, June 26, 2009 8:31 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Bill Cox, CLU
2365 Harrodsburg Rd.
Lexington, KY 40504-3335

June 26, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. FINRA is highly qualified to regulate the suitability of securities and should continue to do so, but your obligation to the public and B/D needs to stop there. Regulating how insurance, business continuation strategies or estate planning arrangements should be designed is totally out of your area of expertise so do not go where you are are not needed. The insurance industry is highly regulated as it is and for another regulatory body to poke their nose in our arena is totally unnecessary and exepensive. Please just stick to what you are doing and continue to monitor the actions of B/D who are not obeying the suitabilities regs for securities. This where the abuse has been and will continue if FINRA does not step in and take action. Trying to regulate the non securities industry will only stretch FINRA thin and disable you from executing your current primary busienss.
So stick to what you are doing and stay out of the non securities industry.

Sincerely

Bill Cox, CLU, CHFC, CASL
8592194336

From: Jamie L. Cox ChfC [mailto:jamie@axcessyourfuture.com]
Sent: Tuesday, June 23, 2009 12:16 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. **FINRA's authority should not be expanded to include non-securities products and services.**

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Jamie Cox, ChFC
Managing Partner
Axcess Financial Group
P: 505.872.4900
F: 505.872.9400

From: George Coxhead [mailto:Coxhead_George@nlvmail.com]
Sent: Friday, June 26, 2009 10:30 AM
To: Comments, Public
Subject: opposing onerous regulations on non securities products

I am a registered rep and insurance professional, and I am urging you to not include fixed, and equity indexed insurance products under the same regulatory finra oversight as securities. When you study the products, it makes no sense at all, it adds unnecessary paperwork for the client and rep. It is illogical, because of the safety of the products, and their stark contrast to securities. To treat a non securities product as a security is foolish. I look forward to your use of common sense to decide this matter. Sincerely, George Coxhead

George Coxhead is a Registered Representative and Investment Advisor Representative of Equity Services, Inc., Securities and investment advisory services are offered solely by Equity Services Inc., member FINRA/SIPC, a Registered Broker/Dealer and Registered Investment Advisor. The Teague Group is independent of Equity Services, Inc.

From: Nick Cozzone [ncozzone@woodburyfinancial.net]
Sent: Thursday, June 18, 2009 2:19 PM
To: Comments, Public
Subject: Proposed Rule 2111
Attachments: Comment Letter to SEC.pdf

Please feel free to contact me for further information.

Thank you,
Nick

Nick Cozzone
Registered Rep
Ph. 559-432-3548
Fax 559-432-3742

June 18, 2009

Re: Comment Letter to SEC

To Whom It May Concern:

I am writing this letter in response to the proposal to consolidate the existing rules governing suitability and the know-your-customer obligations into a new FINRA Rule 2111. I have read an overview of the changes that would occur should this Rule reach implementation and would like to offer my strong disapproval of the perceived objectives that are intended. This Rule would greatly expand the scope of a client or plaintiff using the benefits of hindsight as a lever for unnecessary and wrongful action. If one were to take a look at the recent events of the financial markets since late 2007 and the cause for such events, it would not be too difficult to see how even the most appropriate of advice and decisions on behalf of the financial professional and client could not have avoided the results that have evolved. It is to my understanding that each recommended transaction would be isolated to determine suitability. This is completely impossible to achieve. A financial professional must take into account every nuance of the client's life, risk profile, needs and goals, and current overall investment portfolio to guide in each decision. To isolate an individual transaction or recommendation would not serve in the best interest of the client first, but also the ability for the professional to pivot as life changes. Being in my 11th year since my inception into the finance industry, one constant has existed within client relationships, and that is change. This rule would greatly interfere with the natural client / advisor relationship and would only create obstacles.

It is my belief as a result of my experience that FINRA is focusing on the wrong area if the intention is to increase suitability. The client / advisor level of the industry is functioning well especially as the average client becomes more informed on options and the industry. This is happening naturally through the ever growing information age we are in. It would be advised that FINRA cease this proposed Rule and move its focus toward the product manufacturers and their ability to support the guarantees and benefits being offered. This may very well be the largest concern our industry will face in the very short term.

I would be happy to discuss my opinion should anyone desire to speak with me on this issue. I can be reached at 866-469-4274 ext 102.

In Liberty,

Nick J. Cozzone

From: CraftFin@aol.com

Sent: Tuesday, June 23, 2009 11:02 AM

To: Comments, Public

Subject: Fwd: GovAlert [RED]: Submit Comments to FINRA by June 29, 2009 Opposing Expan...

Attachments: GovAlert [RED]: Submit Comments to FINRA by June 29, 2009 Opposing Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities.

Dear Folks,

Please stay out of my life with this suitability that you are proposing. FINRA needs no more power.
God bless,
Gerald W. Craft

From: NAIFA Government Relations [governmentrelations@naifa.org]

Sent: Tuesday, June 23, 2009 9:40 AM

To: Craft

Subject: GovAlert [RED]: Submit Comments to FINRA by June 29, 2009 Opposing Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities.

NAIFA GOVALERT

CONNECTIONS THAT COUNT

To: All NAIFA Members
From: Cliff F. Wilson, CLU, ChFC, LUTCF, CLF, NAIFA President
Date: June 22, 2009
Subject: Submit Comments to FINRA by June 29, 2009 Opposing Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities.

Background: FINRA recently issued Regulatory Notice 09-25, in which FINRA proposes to consolidate its various rules and interpretations governing suitability and "know your customer" obligations into a new consolidated FINRA rulebook. ***However***, the notice also contains a request by FINRA for "comment on whether it 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.*" The net result of broadening the scope of a registered rep's suitability obligations would appear to be that the rep would have to run all transactions through the b/d and conduct a FINRA suitability analysis for all investment products and strategies recommended by the rep, rather than only for those recommendations which involve securities.

NAIFA Position: NAIFA opposes expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

What You Can Do: Please contact FINRA today and express your opposition to the expansion of FINRA's suitability obligations to recommendations that do not involve securities. You can do this by:

- Going to NAIFA's Legislative Action Center at http://capwiz.com/naifa and electronically submitting comments to FINRA. Once at the Action Center you will find a pre-written comment letter ready for you to send to FINRA. However, the Action Center does allow you to change and revise your comments before they are submitted-**and we strongly urge you to do this.** It always has a greater impact if you use your own words when submitting comments to regulators or lawmakers-so please take a few minutes and "personalize" your comment letter.
- **Better yet**, send your own comments to FINRA either by e mail to pubcom@finra.org or by mailing written comments to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, 1735 K Street, NW, Washington, DC 20006-1506. Please reference "FINRA Regulatory notice 09-25" in the subject line of your e mail or letter.

Sample Comments: Again, using your own words always has a greater impact on regulators than submitting the same form letter as many others. The following sample language can be used as the basis for your comment letter or text of your e-mail:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

At the outset, let me clearly state that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Another reason why the expansion of FINRA's suitability obligations is unwise is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes

may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Reminder-the comment period closes June 29, 2009. PLEASE submit your comments by no later than Monday, June 29, 2009.

Technical Assistance? If you have technical questions about using NAIFA's Legislative Action Center, please contact Matthew Laptew at 703-770-8154, or Mlaptew@naifa.org. If you have questions about the FINRA proposal, please contact Gary Sanders at 703-770-8192 or gsanders@naifa.org.

Thank you in advance for your help on this issue!

National Association of Insurance and Financial Advisors
2901 Telestar Court, Falls Church, VA 22042; 1-877-TO-NAIFA

From: Tom Crane [mailto:tcrane@commongroundfinancial.com]
Sent: Wednesday, June 24, 2009 1:26 PM
To: Comments, Public
Subject: FINRA Oversight

I am a licensed insurance professional and a securities registered representative. I am writing in strong opposition to expanding FINRA's suitability obligations to non securities products. I feel this muddies the water on insurance and other non securities products which are already regulated by other entities. The old adage if everyone is in charge, no one is in charge. Also it is important to deter dishonest investment professional. However this proposal seems to make more work for honest professionals and just gum up enforcement with a lot of data, most of which is unnecessary. It is similar to putting time and money into inspecting 6 month old cars, when those resources would be better spent removing or improving cars that pollute. I encourage FINRA to put its resources and attention on catching the people who take inappropriate actions with securities, and not get so diffused with programs like this proposal that it hinders their primary mission.

Thank you for your attention,

Thomas R. Crane Jr.
Branch Manager, Lincoln Securities
One Mill Plaza
Laconia, NH 03246
603-524-4488- ph
603-524-8383- fax
603-387-6491- cell

From: bcrangle@comcast.net
Sent: Thursday, June 25, 2009 12:44 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Re: FINRA Regulatory Notice 09-25

I object to expanding FINRA's suitability obligations to recommendations that do not involve securities. The cost to duplicate and add more regulatory layers to those already in place through the various state and local jurisdictions is not feasible.

People who engage in unsuitable sales and in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

As a licensed insurance professional and registered representative, I request that the proposal be dropped. Thank you for your consideration.

Beverly Crangle

From: Peter Crimmins [mailto:pcrimmins@psfin.com]
Sent: Tuesday, June 23, 2009 10:01 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

To Whom It May Concern,

While I strongly believe in the oversight by FINRA over the securities portion of my business, I am as strongly opposed to the FINRA oversight of the non-securities portion of my business. Our clients need to be protected from the few people in my profession that make our industry 'tainted' by their actions. I support all securities oversight for this reason... to protect our clients and to keep me up to date with the ways I can protect my clients.

I feel that the insurance industry has done a great job with oversight and don't feel the line should be blurred between the investments and insurance. It is my desire not so see FINRA expand its oversight into an area that is already properly regulated.

Thank You,

Peter W. Crimmins
Financial Advisor

Office: (480) 355-5230
Cell: (480) 540-9488
Fax: (480) 223-6432

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Tuesday, June 23, 2009

Marcia E Asquith
Office of the Corporate Secretary, FINRA
1735 K Street NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 09-25

Dear Ms Asquith,

I have been a licensed insurance professional since 1959. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions

I do not believe that FINRA has any jurisdiction over products and services which are not securities. Neither FINRA nor the broker/dealers have the resources or product-specific expertise necessary to oversee all of the non-securities transactions.

I do not believe that FINRA's authority should be expanded to include non-securities products and services, as they have a problem handling security products. Look at Mandoff and others.

The various State Department of Insurance already regulate the many comprehensive regulation at the state level. Consumer protection is a very important subject and can be better managed at the state level and with much less confusing regulatory requirements....the Goal is for Consumer Protection.....not more Regulation by Career Government employees and departments.

There is a debate on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients. They are considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements. This debate is underway and changes will be made in the months ahead.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you in advance for your time to consider my views on this issue.

Sincerely

Elmo Cure, Jr.

From: cyrandcyr@choiceonemail.com
Sent: Friday, June 26, 2009 10:20 AM
To: Comments, Public
Cc: governmentrelations@naifa.org
Subject: FINRA Regulatory Notice 09-25

Dear Sirs,

I have been in the business for over 40 years and have been active politically on behalf of my clients and the industry, even being registered in the past as a lobbiest (volunteer). I believe strongly in professional conduct and accountability and have practiced it thoughout my career. That said, I believe FINRA is overstepping its bounds to attempt to regulate products and services over which it DOES NOT have authority. The consumer (who ultimately PAYS FOR BUREAUCRACY) is not served by this intrusion. Present regulations, which I support, are sufficient.

Respectfully,

Alan J. Cyr, CLU
Cyr & Cyr Insurance Services

-----Original Message-----
From: dalessandrorld@aol.com [mailto:dalessandrorld@aol.com]
Sent: Wednesday, June 24, 2009 1:56 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

ROY DALESSANDRO
300 MT. LEBANON BLVD SUITE # 311
PITTSBURGH, PA 15234-1510

June 24, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Don`t you have enough on your plate already? Organizations are supposed to work together for the good of the membership.I think you are polarizing the organizations and only bitterness and anger will be the result.

Why not try to work out some type of compromise or arrange a cooling off period.The government already has enough regs on the books !!

Sincerely,

ROY L. DALESSANDRO
412-344-2500

From: Brendan Daly [bdaly@commonwealth.com]
Sent: Thursday, June 25, 2009 10:30 AM
To: Comments, Public
Subject: Comments to Regulatory Notice 09-25, Suitability and "Know Your Customer"

VIA ELECTRONIC MAIL

June 25, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 09-25, Suitability and "Know Your Customer"
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

In its Regulatory Notice 09-25, FINRA has proposed the consolidation and expansion of FINRA rules governing suitability and know-your-customer obligations. The modified rules would, among other things, codify various SEC and FINRA interpretations and expand the scope of the suitability rule to include non-securities-related recommendations.

Commonwealth Financial Network® (Commonwealth) is an independent broker/dealer and an SEC registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 registered representatives who are independent contractors conducting business in all 50 states.

Commonwealth appreciates the opportunity to comment on the proposals. While we understand the need to protect investors, we strongly oppose any effort by FINRA to broaden the suitability obligations of members to products and services over which FINRA has no authority or jurisdiction.

Proposed FINRA Rule 2111. Suitability
The "reasonable basis" standard of the proposed rule requiring members and associated persons to consider factors such as age, other investments, financial situation and needs, tax status, investment objectives and experience, time horizon, liquidity needs, risk tolerance, and so on, is a familiar concept to many broker/dealers, and Commonwealth does not challenge the proposed language in the context of securities products.

On its face, the language of the proposed rule does not appear to expand the suitability requirements to non-security products such as insurance products or investment advisory services. FINRA has requested comment, however, on whether it should propose an expansion of the suitability rule to "investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities." FINRA cannot use the catch-all concept of fair dealing to usurp the authority of state and federal regulators and expand into new territory. To the contrary, FINRA may only exercise the authority granted to it by the SEC. Therefore, Commonwealth strongly opposes any such expansion of the suitability requirements to non-securities products.

For example, broker/dealers currently have no supervisory obligations under existing rules with regard to the sale of fixed insurance products. The proposed rule would lead to regulatory redundancy and contradiction with existing state insurance regulations that are already in place and would force broker/dealers to follow inconsistent or redundant suitability rules.

Financial planning by investment advisers is another activity that is currently governed by state or SEC rules and regulations. Adding redundant or inconsistent suitability standards to an already highly regulated business that is subject to the more stringent fiduciary standard would not further the goal of investor protection. Rather, it would only serve to add to the morass and complexity of multiple regulatory schemes and would arguably be in conflict with the fiduciary standard applicable to investment advisers today.

Timing of the Proposed Rule

We urge FINRA to delay the proposed rule in light of President Obama's recent Financial Regulatory Reform proposal, wherein it is recommended that the SEC establish "a fiduciary duty for broker-dealers offering investment advice and harmonizing the regulation of investment advisors and broker-dealers." The resolution of this important public policy matter may negate the Proposed Rule, and, as such, it is premature for FINRA to propose a revision to the suitability rule at this time. If FINRA were to proceed with the proposal, which would require firms to modify policies, procedures, and systems reasonably designed to comply with the revised suitability rule, the implementation of such changes by member firms would be costly and wasteful in the event the suitability rule is negated by a new fiduciary rule. Therefore, FINRA should delay the adoption of new suitability requirements until policymakers have settled the broader issue of the appropriate standard of care applicable to broker/dealers.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,

Brendan Daly
Legal and Compliance Counsel
781.736.0700 | 781.529.9140 fax

Commonwealth Financial Network®
29 Sawyer Road, Waltham, MA 02453-3483 | www.commonwealth.com

Futures Industry Association
2001 Pennsylvania Ave. NW
Suite 600
Washington, DC 20006-1823

202.466.5460
202.296.3184 fax
www.futuresindustry.org

FIA

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority 1735 K Street, NW
Washington, DC 20006-1506

RE: **Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations**

Dear Ms. Asquith:

The Futures Industry Association ("FIA")[1] is pleased to submit this letter in response to Financial Industry Regulatory Authority's ("FINRA") request for comments on its proposed consolidated FINRA rules governing suitability and Know-Your-Customer obligations. In conjunction with consolidating FINRA rules governing suitability and know-your-customer obligations with respect to those activities that fall within FINRA's jurisdiction, FINRA requests comments on whether it 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. FIA is submitting this comment with respect to the futures business of firms (i.e., executing brokers, futures introducing brokers, or futures commission merchants ("FCMs")) that are also broker/dealers that are governed by FINRA regulations.

FIA objects to the imposition of these FINRA requirements on commodity futures trading and commodity futures commission merchants for two primary reasons: 1) commodity futures are exclusively governed by the Commodity Futures Trading Commission ("CFTC"); and 2) under the CFTC's delegated powers, the National Futures Association ("NFA") has created and implemented a regulatory framework respecting futures customer suitability. Additionally, FIA does not support the extension, without further justification, of FINRA's regulatory reach to the unrelated activities of a FINRA-regulated entity, as a matter of principle.

---

[1] FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

With respect to the CFTC's jurisdiction, Congress passed the Commodity Futures Trading Commission of 1974 and created the CFTC. "Along with an increase in powers, the [CFTC] was given exclusive jurisdiction over commodity futures trading."[2] The brief CEA exclusive jurisdiction provision of the 1974 legislation has been amended slightly on occasion since 1974 and now reads in its entirety:

> The [CFTC] shall have exclusive jurisdiction, except to the extent otherwise provided in subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving contracts of sale of a commodity for futures delivery (including significant price discovery contracts), traded or executed on a contract market designated or derivatives transactions execution facility registered pursuant to section 7 or 7a of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the united States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on the courts of the United States or any state.

When enacted in 1974, this provision was intended to "separate the functions of the [CFTC] from those of the Securities and Exchange Commission and other regulatory agencies."[3] In other words, through 7 U.S.C. §2(a)(1)(A) Congress sought "to consolidate federal regulation of commodity futures trading in the [CFTC]."[4] Under the exclusive grant of jurisdiction to the Commission, the authority of the Commodity Exchange Act (and regulations issued by the Commission) would preempt the field insofar as futures regulation is concerned."[5] As further described by the Senate and House Conference Committee Chairmen: "In establishing this Commission, it is the Committee's intent to give it exclusive jurisdiction over those areas delineated in the Act. This will ensure that the

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[2] *Merrill Lynch*, 356 U.S. at 386.
[3] *Merrill Lynch*, 356 U.S. at 386.
[4] *Merrill Lynch*, 356 U.S. at 387
[5] *Id.*

affected entities – exchanges, traders, customers, et cetera – will not be subject to conflicting agency rulings."[6]

The 1974 Conference committee on the CFTC Act explained that "the Commission's jurisdiction over futures contract markets ....is exclusive ... and the Commission's jurisdiction, where applicable, supersedes State as well as Federal agencies."[7]

This recognition of the inherent differences of the structure and customer base between traditional futures contracts and securities products is particularly apt when it comes to customer suitability. While applicable to all clients investing in securities, suitability rules in the securities markets are primarily designed to provide important customer protections for retail securities investors. In contrast, there has never been a suitability rule in the futures markets. The only common denominator is that NFA rules require the registered FCM to "know its customers" but NFA KYC rules relate primarily to the identity and financial information relating to such futures customers. Also, futures markets have historically been predominantly institutional client focused with only a small retail client base.

In addition. there is a definitive difference in the various types of products overseen by the SEC and those overseen by the CFTC. Securities and futures products differ in that, while there may be an endless variation of different types of securities with varying investment strategies (conservative, principal protection, growth, capital gains, etc.), futures contracts are inherently standardized with only two traditional types of investors -- hedgers and speculators -- each of whom trade futures with the investment strategy of risk management and capital gains. Therefore, the small number of retail futures investors are able to assess risk factors as they pertain to their particular situation much more easily by examining very well-defined contract specifications, which change infrequently, if at all. Also, contract specification changes are well-publicized at the time of adoption and are generally phased in as a futures contract is listed for trading well ahead of delivery or expiration. These issues are best addressed through the NFA KYC rule and the risk disclosure requirement.

In the case of securities, on the other hand, it is important that an investor consider the disclosures in the relevant company's SEC filings, press releases and other company specific information. Of course, this information can change drastically over time and generally there is no specific time of expiration for these

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[6] 120 Cong. Rec. 30459 (1974) (Sen. Comm. Chairman Talmadge). *See also* 120 Cong. Rec. 34736 (1974) (House Comm. Chairman Poage, the provision was adopted "in an attempt to avoid unnecessary overlapping and duplicative regulation.")

[7] H.R. Rep. No. 93-1383, at 35 (1974) (Conf. Rep.).

products. This quality of there being additional relevant information is also true for security futures, where knowing the information published by the company is also important. For the average retail investor, this may be too much information to readily understand and assess. Thus the suitability rule provides protection that is more appropriate for a retail investor.

Pursuant to Section 17(p)(3) of the Commodity Exchange Act (7 U.S.C. §21(p)(3)), which requires that the rules of a registered futures association "establish minimum standards governing the sales practices of its members and persons associated therewith....", the National Futures Association ("NFA") has established standards in its Compliance Rules which apply to sales practices and communications between NFA Members and Associates and futures customers[8] and generally prohibit fraud and deceit and require NFA Members and Associates to "observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business." Additionally, these general rules are supplemented with specific guidance from NFA's Business Conduct Committee decisions and guidance from NFA's Advisory Committees.

Through its rules and its disciplinary structure, NFA has defined standards for its Members' and Associates' relationship with their customers.[9] Principles of fair conduct are laid out in the rules and NFA's disciplinary actions also provide specific guidance respecting acceptable conduct. The NFA rules cover all kinds of promotional communications with the public, as well as routine day-to-day contact with customers. The NFA rules include, for example, any kind of written, electronic or mechanically produced message or presentation which is directed to any member of the public, whether broadcast over the media, delivered through the mail or presented personally. Another layer of customer protection is provided through risk disclosure statements. This framework of regulation by the CFTC and NFA is premised on the conclusion that the customer is in the best position to determine the suitability of futures trading if the customer receives an understandable disclosure of risks, as required in CFTC regulations. It is NFA's position that the approach taken in its Rule 2-30 is preferable to one which would erect an inflexible standard that would bar some persons from using futures markets.

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[8] Notably, there are differences in the definition of "customer" under FINRA rules and its definition under the futures regulation. (For example, for CIP purposes, a "customer" is "a person that opens a new account with a futures commission merchant." 31 C.F.R. § 103.123(a)(5)(i).)

[9] Notably, FINRA's proposed suitability rule makes no distinction as to the type of relationship between the "customer" and Member. Under the established regulatory regime for futures trading, there are different obligations with respect to customers depending upon the nature of the relationship. (For example, CIP requirements do not apply to an FCM when acting solely as an executing broker. FIN-2007-G001.)

FIA appreciates the opportunity to submit these comments with respect to FINRA's request for comment on its proposal to expand suitability obligations with respect to instruments other than securities (which fall under FINRA's jurisdiction). If you have any questions concerning our comments, please feel free to contact Tammy Botsford, FIA's Assistant General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President

cc: James S. Wrona (FINRA)
Ananda Radhakrishnan (CFTC)

From: Daubenmire, William [mailto:william.daubenmire@westernsouthernlife.com]
Sent: Wednesday, June 24, 2009 10:52 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I have been in the life insurance industry for 25 years with Western-Southern Financial Group, and am also a registered rep. It is the intention of this letter to let you know that I strongly object to expanding FINRA's suitability obligations to products that do not involve securities.

Our products are regulated at the state level, through the efforts of state insurance departments and other state regulators. They have done a great job over the years in protecting consumers from being mislead about the products that are offered, and the application of FINRA rules would only add to the confusion of monitoring and enforcing those rules already in place. I believe that those agents who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. FINRA's authority should NOT be expanded to include non-securities products and services.

Due to the fact that much debate is currently going on concerning the standard of care which broker/dealers and investment advisors owe to their clients, it would be inappropriate for FINRA to expand or revise current suitability requirements until these discussions are complete.

Again, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thanks for considering my views on this issue, and feel free to contact me regarding this matter.

William M.Daubenmire
Western-Southern
210 Northtowne Ct.
Newark, Oh 43055

(740) 366- 1316

From: Charles Day [ceday@shentel.net]
Sent: Tuesday, May 26, 2009 8:09 AM
To: Comments, Public
Subject: Keeping to job at Hand

Please note that I agree with the following:

NAIFA opposes expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please get to business doing what needs to be done and let insurance and non-securities alone!!!!!!!!!!!!!!!!!!!

Thanks,

Mutual Of Omaha
Charles E. Day, Jr.
P. O. Box 279
New Market, VA 22844-0279
540-740-4086
ceday@shentel.net

From: H Keith de Noble [keith@denobleandjones.com]
Sent: Monday, June 29, 2009 2:40 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Dear Associate:

As a licensed insurance professional and registered representative I am very concerned about and strongly objecting to any expansion of FINRA's suitability obligations pertaining to any products that are not securities.

I actively support the highest ethical standards and sales practices and dutifully report illegal activities to those organizations responsible. FINRA's responsibilities are security related and do not need to be expanded, particularly when they will cause duplicity of responsibility, and increased cost to the professional practitioners when current regulation is more than adequate.

There is considerable ongoing dialogue regarding future changes and regulations concerning insurance and financial services that are yet to be completed. It would be inappropriate and a preemptive waste of time and money for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

I implore you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

H. Keith de Noble

13200 W. Markham, Suite 105

Little Rock, AR 72211

501-224-3366

keith@denobleandjones.com

-----Original Message-----
From: medokcntr@earthlink.net [mailto:medokcntr@earthlink.net]
Sent: Wednesday, June 24, 2009 6:26 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Merrell Dean
2485 Boardwalk Suite 103
Norman, OK 73069-6381

June 24, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services. Contain yourself to your current mission and do it well.

Thank you.

Sincerely,

Merrell E. Dean
4053297335

From: Scott Dean [mailto:SDEAN@arvest.com]
Sent: Tuesday, June 23, 2009 10:12 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25--Although you will receive manycorrespondence to this point I URGE you to listen to those ofus on the ground.

Marcia E. Asquith
Office of the Corporate Secretary, FINRA
1735 K Street, NW
Washington, DC 20006-1506.

RE: FINRA Regulatory notice 09-25

As one of the advisors who closely looks out for clients best interest (licensed insurance advisor and registered Investment Advisor) I *strongly urge you to object to expanding FINRA's suitability obligations to recommendations that do not involve securities.*

Here is what concerns me the most:

1. Having been in insurance, brokerage, and banking environment it is painfully clear that neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.
2. The application of FINRA rules to state regulated products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.
3. Finally, further broader-scale changes may be made within a matter of months rendering seemingly 'knee jerk' reactions now by FINRA useless or at least unnecessary in hind sight.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Respectfully,

Scott Dean, Client Advisor
Regional Insurance Specialist
Arvest Asset Management
Arvest Bank Group
4301 W. Memorial Rd
OKC, OK 73134
405.419.3826 Direct Line
405.419.3814 FAX

From: Christine Denham [Christine.Denham@RaymondJames.com]
Sent: Friday, June 26, 2009 10:17 AM
To: Comments, Public
Subject: Comment Letter RE: Reg Notice 09-25

Dear Ms. Asquith or To Whom It May Concern,

I would like to voice my personal opinion about proposed rules governing suitability and the "Know-Your Customer" obligations.

First, I understand that the proposed rule would separate each investment from the overall portfolio and that suitability tests would need to be run on individual investments. I strongly oppose this measure and I can think of several examples where this would actually harm the customer, not protect them. For example, if an older client wants to stretch his or her IRA to a much younger beneficiary, the investment strategy for growth would look very different from investment choices for an older customer. Another example may be for a retiree who does not want their nest egg to outlast their retirement. The investment strategy, or a particular security choice, may be more aggressive than appropriate for a particular age category. However, it is also a disservice for us to knowingly make recommendations where the expected rate of return will never accomplish the client's goals. Finally, there are specific tax benefits that may apply to certain accounts that may explain why an account may be more or less aggressive than others. Earnings come out of a Roth IRA tax free. It is our general practice that these assets are the last to be used for income. Therefore, the Roth account may have a more aggressive allocation and a longer time horizon than taxable accounts or even a Traditional IRA

Secondly, I believe it is premature for FINRA to finalize a rule such as this. Congress is currently discussing a broader standard of care for clients of independent financial advisors. Finalizing a new FINRA regulation at this time may only complicate matters once Congress comes to a conclusion about the SEC's overall jurisdiction concerning clients of independent financial advisors.

Thank you for reading and working for the best resolution for our clients.

Sincerely,

Christine Denham CFP®, MBA

Director of Planning and Portfolio Analytics

Raymond James Financial Services, Inc.

Member FINRA/SIPC

329 W. Silver Lake Rd. Fenton MI 48430

6467 Waldon Center Dr. Suite 150 | Clarkston MI 48346

810-593-1624 or 248-625-2992 or 800-638-6900

Fax: 810-593-1643 or 248-625-7032

Email: christine.denham@raymondjames.com

From: Dietz, Renee (NPC) [renee.dietz@natplan.com]
Sent: Monday, June 29, 2009 10:11 AM
To: Comments, Public
Subject: Oppose Expansion of Rule 2111

Hello,

I strongly oppose any expansion of Rule 2111 to include "non-securities, services and strategies". I already firmly support all suitability requirements for the products I offer and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to consumers.

Thank you for your time and consideration.

Respectfully,

Renee Dietz
Financial Adviser
National Planning Corp.
440.323.6789
800.373.1149
Fax 440.323.1959

From: David M Dinn [mailto:david.dinn@gte.net]
Sent: Thursday, June 25, 2009 4:19 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Besides being ludicrous, involving B/Ds in non-security activity would a management nightmare, reduce choice and end up being anti-consumer.

David M Dinn, CLU, ChFC, MSFS
2625 N Meridian Street
Suite 202
Indianapolis, IN 46208
317 925 5433

From: Dolan, Craig W. [mailto:CWDolan@fedins.com]
Sent: Wednesday, June 24, 2009 11:50 AM
To: Comments, Public
Subject: Expanding FINRA

To whom it may concern,

I strongly oppose the expansion of the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. As this is being debated at a national level at this time, it would be premature and inappropriate (in my opinion) to expand this at this time. I am a professional in the insurance industry and I am well aware of the significant scrutiny that we are under in each state. We do not need a duality of scrutiny. This would create unnecessary oversight and more confusion than accomplishment.

Thank you.

Craig W Dolan
CPCU/LUTCF/ARM
cwdolan@fedins.com
507-455-5569

From: Dooley, Marty [mailto:mdooley@highland.com]
Sent: Tuesday, June 23, 2009 1:50 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am opposed to FINRA regulation of non-securities related activities as it appears that 09-25 is intended on doing.

Marty Dooley
Managing Principal
Highland Capital Brokerage - Milwaukee
333 Bishops Way, Ste 140
Brookfield, WI 53005
(262) 860-1666 x101
(262) 860-1655 - Fax

I have absolutely no confidence that FINRA can provide recommendations of suitability of investments based on its poor performance in securities. Furthermore it is clear that FINRA has a vague (at best) conceptual view of insurance and the insurance industry based on their conceptual framework arguing for control over fixed annuities. FINRA should learn a few lessons from state regulators and apply them to their own house of cards.

Bob Doucette
Field Sales Manager
Financial Brokerage, Inc.
2238 South 156 Circle
Omaha, NE 68130
800-397-9999, extension 3418

From: Ranny Duncan [mailto:Ranny.Duncan@firstwesternbank.com]
Sent: Tuesday, June 23, 2009 10:43 AM
To: Comments, Public
Subject: FINRA Regulatory Notice 90-25

I am a licensed insurance since 1974. Regulations have been a part of my business since that time. For a few years I was also a Registered Representative until regulations from the SEC completely overwhelmed my time and created a hazardous road for me to travel. I have since terminated my securities license and now continue my insurance activities.

I would really like to discourage the addition of non-securities products being regulated by FINRA. The insurance industry in general has many regulations brought about by agents who are unscrupulous and non-compliant. But to add another strict layer of regulations will handicap those of us who have made a life of service to our customers. We are always penalized by jerks and crooks, but since elementary school we all have had our hands slapped because of the few knotheads. Let's just try to eliminate those folks without handicapping our whole insurance industry.

Please do not bring non-securities products under FINRA regulations.

Ranny Duncan, Agent

First Western Agency LLC

PO Box 580

Spearfish SD 57783

Office: 605-642-4711 Fax: 605-722-0231

ranny.duncan@firstwesternbank.com

From: Tom Dunn [mailto:thomasd@wollman-insurance.com]
Sent: Tuesday, June 23, 2009 11:44 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

Dear FINRA - If you need to regulate the registered reps, here's the way to do it and not crush the reps who do a good job. If you have ever received a prospectus for a fund or investment then you know its not the most costomer friendly piece.. In it's most simple terms, the job of a registered rep/ stock broker/insurance agent/ financial advisor is to decipher what's in the prospectus/policy, explain what's in it to the client, and with that infromation sit down with the client and determine if the fund/investment/policy is in the client's best interest. So if you want to regulate something, then it would seem that the best place to start is with the prospectus/policy so that if the agent/registered rep/financial advisor doesn't relay all the appropriate information then the prospectus should be customer friendly enough to do so. Maybe there should be a follow-up phone call from the fund company/insurance company or even a video tape. Lets keep things simple - An entire industry exists (broker dealers) because the information in the policy/prospectus hasn't been relayed in an understandable way to the customer.Tom Dunn

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From: Matt Echelmeier [mailto:echins1@aol.com]
Sent: Tuesday, June 23, 2009 9:32 PM
To: Comments, Public
Subject: Expanding FINRA oversight

To whom it may concern:

For all of the obvious reasons, I firmly object to expanding FINRA's oversight of MY business. Allowing my broker dealer to knit pick on every transaction, beyond my security business, is not right. BDs are already asked to do way to much as it is with compliance. I firmly believe that you are over-reacting to this issue. I have been a longtime member of NAIFA and I sure hope you listen to our 55,000 + members.

Sincerely,

Matt Echelmeier, LUTCF
Echelmeier Insurance Agency
600 N. Easton Rd., 2nd Floor
Willow Grove, PA 19090
(215) 659-1144 FAX(215) 659-7212

From: Pam Phillips [pkp@edelsteinfinancial.com]
Sent: Monday, June 29, 2009 12:56 PM
To: Comments, Public
Subject: A MESSAGE FROM HOWARD EDELSTEIN

Dear Ms. Asquith,

I am a life insurance agent in Cleveland and have represented Northwestern Mutual Life for over 40 years. We have a large clientele who we serve with various risk management products including both variable and non-variable products. I and my company have long supported the notion of careful regulation and oversight in our industry, but I strongly oppose the ideas under consideration to expand the scope of FINRA's suitability rules to include products that don't involve securities.

I also serve on the Federal Legislative Task Force for The Association for Advanced Life Underwriting (AALU) and spend a considerable amount of my time each year in dialogue with members of Congress, particularly members of the Ways and Means and Senate Finance Committees as we discuss our issues of common interest, and I worry that the regulatory bodies are on the verge of going overboard through the application of much too rigorous standards for a risk product industry that is already regulated up to its ears. We really don't need more regulation to guarantee that the insuring public will be well served. I hope you will consider my input when you and your associates get down to making decisions on the expansion of suitability rules.

Very truly yours,

Howard

Howard B. Edelstein, CLU,AEP
Edelstein Financial Corp.
925 Euclid Avenue #1950
Cleveland, Ohio 44115
PH: 216-357-3030
FAX: 216-357-4080
hbe@edelsteinfinancial.com

From: ed edmiston [edsmail65@sbcglobal.net]
Sent: Monday, June 29, 2009 5:12 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

As a licensed insurance provessional I am well aware of the need for stringent rules and regulations in the area of compliance so that agents will only present and sell products that serve to fill the needs of both the proposed insureds and the owners of the policies. I have been in this business for over 30 years and have watched continual changes in this already regulated business.

I am also licensed as a registered representative, which of course is regluated by FINRA, since Insurance is not considered and investment I don't see any need for FINRA to get involved in the regulation of ture Insurance Policies. Granted that in Variable products the agent not only needs to be aware of the suitability of the client but the suitability of the policy to fill the clients needs. Therefore I contend it is the Agent that needs to be regulated not the sale.

After observing recent violations in the SECURITIES AND EXCHANGE area I do not feel that FINRA has the product-specific expertise nesserary to manage or oversee non-securitues transactions. I don't you need to expand into these areas.

Sincerely, Oscar D. Edmiston

Edassoc@sbcglobal.net
3817 Highridge
Edmond, Ok.73003
(405)216-9696

From: adam edwards@nmfn.com
Sent: Tuesday, June 23, 2009 11 26 AM
To: Comments, Public
Subject: Against Non-securities suitability regulation for FINRA

I am a licensed insurance professional and registered representative and am writing you because I strongly oppose expanding FINRA's suitability obligations to recommendations that do not involve securities.

While suitability is essential in our industry and there is a need for regulation, FINRA does not have jurisdiction over products and services that are not securities and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. This is not what FINRA was created and designed for and insurance and other non-securities related products are already highly regulated at the state level. Adding another layer or regulation from FINRA on top of the already existing state regulation would be counterproductive and would have a negative impact on consumers by creating an increasingly more confusing and conflicting effect. This effect would in turn prevent consumers from purchasing products and taking the necessary actions that would help them protect and secure their important financial goals.

Please do not expand FINRA's suitability obligations to include recommendations that do not involve securities. Thanks for your consideration on this issue-

Adam Edwards

Adam J. Edwards, CLU®, ChFC®

Financial Advisor

Northwestern Mutual Financial Network

530 W. Spring St. Suite 200

Columbus, OH 43215

614.222.6026 – office

614.221.0235 – fax

adam.edwards@nmfn.com

My website:

http://www.nmfn.com/adamedwards

From: David M Edwards [mailto:edwards.david@princor.com]
Sent: Friday, June 26, 2009 10:03 AM
To: Comments, Public
Cc: Robbie Donlan
Subject: FINRA expansion of suitability requirements

I am a licensed insurance professional and registered representative. I strongly oppose expanding FINRA's suitability options that don not involve securities.

I believe enforcement of existing regulations by the state insurance departments is what needs to happen.

David M. Edwards, LUTCF
527 W. Chocolate Ave, Suite B
Hershey, PA 17033

From: Ross Elliot [mailto:ross.elliot.b60u@statefarm.com]
Sent: Friday, June 26, 2009 12:05 PM
To: Comments, Public
Subject: Expansion of suitability obligations

FINRA: I am a licensed insurance and registered representative with State Farm as an agent in Buffalo, WY. I urge you to not expand suitability requirements that do not involve securities. More and more of my time is spent with requirements/rules/regulations and compliance. I very much feel the insurance side of things is well-regulated. Ross Elliot, CLU & ChFC

From: David Ellis [mailto:David.Ellis@benfinancial.com]
Sent: Friday, June 26, 2009 11:43 AM
To: Comments, Public
Subject: oposition to expanded control and regulation by FINRA

I am very much opposed to FINRA's attempt to over step there bounds and attempt to step into a regulatory position that is not there's. They are a securities regulatory body not a fixed product regulator. Regulation is currently handled on the state level as it should be and FINRA has no business stealing more power and adding unreasonable regulations just to give them another avenue to collect fines.

David Ellis LUTCF
Beneficial Financial Group

In my opinion, it is not a smart thing to have all business under the direct scrutiny and control by an agency that is obviously not qualified to be in charge, be in charge.!
We have seen how well the SEC has protected us (The public) when it came to matoff's Ponzi scheme. There were individuals not connected with the SEC that warned of the scheme, only to be turned away as not valid observations. We have seen how the SEC allowed AIG and the Banking industry to cause or contribute the near down fall of our entire economy. We know however, that our department of insurance is a very good controller of our industry. I do not support the devise of taking control of business not concerned or affiliated with a specific agency, by an agency that is exceeding its area of interest. I do believe that an agency should begin by cleaning it's own house before attempting to tell another that it's house is not in order!

Paul B. Epstein
Epstein Insurance Services
P.O. Box 7851
Riverside, Ca. 92513
Ca. License number: 0495709

Phone: 951-687-1012 Fax: 951-688-6530
Email: paul@Insuring4You.com
www.Insuring4You.com

From: Jay Eslick [mailto:jkmeslick1@yahoo.com]
Sent: Tuesday, June 23, 2009 9:56 AM
To: Comments, Public
Subject: Conflict

To whom it may concern,

I am a licensed sales representative in several states. I have had my securities license in the past, but choose not to solicit variable products. I take pride in my ethos and am a firm believer that all unscrupulous sales people should be aggressively prosecuted. However, I do not operate in a market which is currently under FINRA's jurisdiction, nor do I wish to fall under any additional, and possibly conflicting, jurisdictions.

Thank you, Jay Eslick

Sent from my iPhone

Barry D. Estell
6140 Hodges Drive
Telephone (913) 722-5416 **Mission, Kansas 66205** **Facsimile (913) 384-6092**
bestell@kc.rr.com

June 24, 2009

Marcia E. Asquith
Senior Vice President and Corporate Secretary
1735 K Street, NW
Washington DC 20006-1500

Re: Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

I represent customers in forced industry arbitration and my comments reflect the point of view of customers with suitability claims in Finra arbitration.

The proposed rule retains many of the opaque features that allow selective and minimal enforcement and places customers at a distinct disadvantage when filing a complaint for "unsuitable" transactions in forced arbitration. Like many Finra rules, the proposed Rule 2111 provides the appearance of regulation without the substance that would allow investors to understand and enforce its provisions. Its more noticeable shortcomings are as follows.

DEFINITIONS

There is no definition of "recommendation." While one can turn to several NASD Notice To Members (NTM) concerning the meaning, the proposed rule would be an ideal time to codify a definition. NTM 96-60 states that "a broad range of circumstances may cause a transaction to be considered recommended, and this determination does not depend on the classification of the transaction by a particular member as 'solicited' or 'unsolicited.'" If "recommended" has nothing to do with "solicited" and "unsolicited" what do those two terms mean when they appear on the confirmation a customer receives? In an arbitration hearing, they are often the determinative issue and customers are often held to a high standard of registering a complaint if the confirmation is incorrect. While customers are presumed to understand what the terms mean, Finra doesn't have a definition.

The confirmation is normally the only document received by a customer that indicates if the broker is attempting to blame really bad investments on the customer or taking responsibility for the "recommendation" himself. Even then, brokers often deny that "solicited" means that they recommended the security. That disingenuous defense is supported by NTM 96-60. The term may be characterized as a technical designation indicating that the broker sent the client a prospectus, report, or other information at the customer's request without any "recommendation" involved in the glowing description provided. A far better definition was that of the NYSE:

> Recommendations [See Rule 472.40(1)]
> For purposes of these standards, the term "recommendation" includes any advice, suggestion or other statement, written or oral, that is intended, or can reasonably be expected, to influence a customer to purchase, sell or hold a security.

That would be simple and definitive. In a current wave of arbitration complaints against Charles Schwab concerning its YieldPlus Ultra-Short Bond funds, orders were marked "unsolicited" even though the customers had never heard of the fund prior to Schwab brokers sending them glowing sales literature concerning (and misrepresenting) the funds. Under the proposed Finra rule, that may or may not be covered and the rule should codify to the extent possible what constitutes a "recommendation" and that if an order is marked "unsolicited" then the customer can not have been provided any written or oral statement that would influence a purchase to buy, sell, or hold.

That means the terms "solicited" and "unsolicited" need definition. Why are they on order confirmations if no one knows what they mean? I have had arbitration claims where the customer was churned with all orders marked "unsolicited." The customer agreed that the broker had never called to solicit a purchase or sale. He had made all the transactions on a discretionary basis, which she did not understand either and which the broker denied claiming she should have complained if the trades were incorrectly marked "unsolicited." The terms need to be spelled out and provided public customers so that everyone can understand the common meaning.

De Facto Control

Another issue of definition is in Supplementary Material 02 concerning quantitative suitability which only applies when a member or associated person has "actual or de facto control." The control issue is completely ridiculous when a broker is making any "recommendation," the consequence of which is to generate excessive commissions. If a customer is trading too much, (s)he should be notified of that fact and told the cost of that trading and the rate of return the customer would need in order to break even after costs. The broker should not be allowed to add fuel to the fire, if truly acting solely as an order taker, with additional recommendations to compound the problem.

In most cases, customers who churn themselves do it at discount brokerage firms that act as order takers only. The "control" issue developed when commissions were fixed and the costs were the same wherever an investor traded. With deregulation of commissions and the advent of discount brokers the concept lost any meaning. Allowing "full service" brokers to churn customers beyond any possibility of profit while claiming that they do not "control" the account is an anachronism retained only to protect churning, the lifeblood of the industry. If a customer is trading excessively to her detriment, the broker and firm should be required to notify her of that and cease making recommendations to further aggravate the situation.

SPEAK NO EVIL

Rule 2090 requires a firm to use due diligence in the opening and maintenance of every account to know the essential facts, but it doesn't require them to do anything with that knowledge. It does not benefit the investing public that a firm uses due diligence if there is no affirmative duty to disclose that the investments are highly unsuitable based on the information acquired. If the firm notes that the securities are qualitatively unsuitable or the customer is trading way too much to show a positive return the customer should be notified.

In the case where a rogue broker changes firms and the securities transferred are entirely unsuitable, the firm appears to have no further duty, and simply determining that they are unsuitable without further action is meaningless. There should be a requirement that the firm notify the customer that her holdings do not meet her financial profile. Instead, firms are allowed to quietly replace all the unsuitable investments, at full commission, without ever "ratting out" the crooked broker who is abusing the customer and will probably do it again. That is not a suitability requirement. It's a suitability joke. If a firm is required to "know its customers" it should be required to inform its customers.

INPUT OR OUTPUT

What is "risk tolerance" and how does a customer know if they have it? How do they know how much money they can comfortably lose until they have lost it? During the 1990's tech bubble, everyone thought that they were "aggressive" because nothing bad ever happened . . . until it did. Most people whose lives and retirements were ruined found that they weren't as "aggressive" as their broker led them to believe. Any "risk tolerance" should be defined by what percent of their liquid net worth they are willing to lose, not how much they believe they stand to gain in a bull market. This is a term with no definition and fuzzy parameters. The customers doesn't know their risk tolerance and the broker decides it for them. It is the result of a suitability determination, not an input. Brokers should not be allowed to designate a "moderate" or "aggressive" risk tolerance without showing the customer how much that means the firm believes they are comfortable losing. As the rule is currently written, the term is an excuse for bad conduct, not a deterrent.

Most customers do not have a clue about their investment objectives either. They just want to make money and not lose very much if any. The broker should have a duty to define the investment objective based on the client needs and how much they can afford to lose without undue suffering. Some firms provide definitions, but many do not. Instead, most customer investment objectives are based on what the broker wants to sell to that customer. Brokerage firms routinely claim at the arbitration hearing that "growth" means risk if not when the account is opened. This is compounded when research reports have no risk parameters so that a recommendation to buy IBM is not distinguished from a buy of a new tech start-up without earnings or history. If the customer has an investment objective and a risk tolerance, then research recommendations should be made according to those parameters, i.e. this is a buy recommendation for high risk accounts only. The customer should not be required to figure it out on their own while the broker maintains that he didn't recommend it.

Another vague term is "investment time horizon" which brokers define in different ways. If a person is approaching retirement, is her "time horizon" until retirement or life expectancy. Brokers commonly defend over concentration in stocks based on the fact that the customer has a 20-year time horizon at age 65. So what is a time horizon? It's a vague term which allows the broker to tell a customer one thing and an arbitration panel another.

I don't expect all of this to be codified in the Finra suitability rule, but the rule uses a lot of terms that are moving targets with no way to ascertain how they relate. Most customers are told that if they want to make money, they have to be aggressive in the

pursuit of growth. Yet according to Ibbotson[1], value stocks, characterized partly by dividend yield, outperform growth stocks over the long term. John Bogle[2] has demonstrated that from 1900 through 2006, reinvested dividends provided almost half of the nominal total return of stocks. Adjusted for inflation, dividends provide 75% of the real total return of stocks. So why is growth so popular an investment? It's partly due to brokers being allowed to claim that growth is the same as speculation and one certainty is that speculative investments pay brokers higher commissions than conservative investments.

ANY WHAT?

Brokers do not seem to be required to document "any other information" upon which they relied in making a suitability determination. Instead, they are allowed to wait until someone files an arbitration complaint against them and then do a post claim suitability determination going back nine years to see if the customer ever did anything similar. A prior speculative investment of any kind has become an absolute defense to a suitability claim before most arbitrators trained by Finra. As it stands now, an investment objective can only be changed after the six year eligibility period for forced arbitration plus the additional three years provided by the Discovery Guide is reached, a total of nine years. Prior to that, its open season on any customer who has engaged in prior speculative investment strategies. No matter what they say, the post claim suitability determination may be made using Finra's Discovery Guide. A change of broker to become more conservative is useless. As long as there is forced arbitration and post claim suitability determinations mandated by Finra in arbitration, the customer doesn't have a right to change her investment objectives to more conservative parameters.

The minimal requirement of checking a few boxes instead of documenting the "other information" used at the time feeds this anti-customer arbitration practice. If a broker doesn't have to document the "other information" he is free to make it up later. Suitability determinations should be based on information known at the time, not discovered later. This could be accomplished by amending 2111 (a) to read . . . "based on the facts known by the member or associated person . . . prior to making the recommendation." If a customer has engaged in speculative activity prior to the recommendation it should be documented prior to the recommendation. It should be "know your customer" not "know your arbitration claimant." Post claim suitability inquiries in arbitration should be banned, which is admittedly another, if related, subject.

A RECOMMENDATION TO HOLD

The proposed rule applies to "transactions" which presumably include purchases, sales and exchanges of securities, but not "staying the course" or "hold" recommendations. A broker may ignore a customer's changed financial situation or the changed suitability of a security or strategy because the recommendation to "hold" is not covered by the suitability rule even though it has the exact same economic effect on the customer as a buy or sell.

A broker should have the same responsibility to take into consideration a customers (changed) financial situation, investment objectives and other information to

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[1] Ibbotson, SBBI 2009 Classic Yearbook, pg. 119, Morningstar, Inc.
[2] Remarks by John C. Bogle at the FINRA first joint Enforcement Meeting, October 15, 2007.

"recommend" that a customer do nothing as to recommend a purchase or sale. Often the recommendation to hold is based on fraudulent information concerning proprietary products or advice. The major example of this was during the tech wreck when customers were repeatedly encouraged to "hold" and "stay the course" based on phony analyst opinions when those same analysts were telling favored institutional customers that the securities had little or no value. Because a recommendation to "hold" is not subject to the suitability rule, it didn't violate a Finra rule. That is really self serving on the part of the industry and should not be allowed to continue. A recommendation to hold has the same economic effect as a recommendation to buy or sell. It should be treated the same.

Barry D. Estell
Attorney At Law

From: Chris Everett [chris@everettandassociates.com]
Sent: Tuesday, June 23, 2009 10:52 AM
To: Comments, Public
Cc: chris@everettandassociates.com
Subject: FINRA EXPANSION

With the securities industry under so much suspicion for it's " inability"/reluctance to monitor/regulate under it's current jurisdiction, there is no way I'd support expansion of it's role. How ridiculous!
Sent from my Verizon Wireless BlackBerry

From: Falke, Carol [mailto:cfalke@finsvcs.com]
Sent: Friday, June 26, 2009 3:56 PM
To: Comments, Public
Subject: FINRA regulatory notice 9-25

Dear FINRA officials:

As a registered rep and a licensed life, health, and disability insurance professional, I want you to know that I strongly object to extending the FINRA suitability umbrella to cover financial transactions that do not involve securities.

Rest assured that I certainly believe that persons who promote and recommend unsuitable sales, and use misleading and fraudulent sales practices should be prosecuted and sanctioned strongly and meaningfully. But non-securities transactions and insurance products details are beyond the expertise and resources of FINRA and broker/dealers.

In addition Insurance products are already highly regulated by the states, and further regulation by FINRA could very likely result in conflicting regulations and compounded paper work.

I could go on, but I won't waste your time. I urge you NOT to expand FINRA's suitability obligations to include recommendations not involving securities.

Thank you for considering my views on this issue.

Carol N. Falke
Registered Representative
Seymour and Associates
1760 Manley Road
Maumee, OH 43537
419-887-6341

DrinkerBiddle&Reath LLP

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June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Re: **Comment re Regulatory Notice 09-25**

Dear Ms. Asquith:

We write to address the proposed Rule 2090, also known as the "Know Your Customer" rule, which is intended to replace NYSE Rule 405 to the same effect. Our concern is that, while the discussion of the proposed text speaks to having sufficient financial information to determine such traditional Rule 405 concerns as the ability to pay for purchases and to repay margin debt, the actual text expands the traditional "essential facts" to include the "customer's investment objectives and policy".

While "investment objectives and policy" may be appropriate information for a broker in the full service business model, we feel it inappropriate to mandate that such information be "in the file" of firms whose business model does not include affirmative recommendations of securities to customers. This is particularly true of self-directed accounts accessed via computer on the internet where customers execute trades by the click of a mouse without any human interface with the brokerage firm. Nor is there any need for that information to be "in the file" of clearing firms, who do nothing more than process orders from correspondent firms and issue account statements, all without any involvement with the customer. Indeed, requiring a clearing firm to maintain this information as well as the introducing firm – which has the primary if not exclusive contact with the customer – would create a needless redundancy of effort, expense and information storage.

In addition to the creation of unnecessary effort and expense, there is also a significant concern that, despite decades of case law and regulation protecting limited service brokerage firms and clearing firms from any liabilities in regard to investments they did not recommend and the conduct of others whom they are not required to supervise, it will not be long before clever counsel for investors will be arguing to panels "that the only point of the rule requiring clearing and limited service firms to have this information, must be for them to check to be sure that every investment in the account is consistent with it." That possibility should not be visited on firms who do not recommend specific strategies or securities, and which may not have any customer contact other than for occasional administrative and clerical matters.

We note that there are numerous prior NASD interpretative bulletins for Rule 2310 which expressly limited suitability to the affirmative act of recommending an investment and which should not now be called into any doubt by the new rule's text. Similarly, NYSE Rule 382's adopting notice permitted the obligations under Rule 405 to be allocated between the introducing firm and the clearing firm. It would be prudent for the new rule and/or its adopting text to expressly reaffirm and preserve those clear delineations.

Thank you for your consideration of these concerns.

Best regards,

Matthew Farley

MF:ema

-----Original Message-----
From: jim@fifthavenueagency.net [mailto:jim@fifthavenueagency.net]
Sent: Tuesday, June 23, 2009 5:40 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

James Feist
108 E. 5th, Suite B
Edmond, OK 73034-3832

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a licensed life, health and annuity agent, as well as holding several securities licenses, I strongly object to FINRA proposing to consolidate oversight into the fixed products areas. FINRA needs to stick to their jurisdiction and not meddle in areas other authorities are already regulating. The States regulatory bodies are doing a capable job of overseeing what they have been authorized to do.

Since FINRA has no jurisdiction over non-securities products, and they shouldn't have, they should not be allowed to expand this non-legal invasion into other areas of our society.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Sincerely,

James J. Feist
405-285-5000

From: JAFINSF@aol.com
Sent: Sunday, June 28, 2009 11:45 PM
To: Comments, Public
Subject: 09-25 Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Cust

Marcia E. Asquith
Senior Vice President and Corporate Secretary

Dear Ms. Asquith,

I am an attorney practicing in San Francisco, California, and I have been representing public customers against broker-dealers for more than seventeen years. I have read PIABA's comment letter of June 26, 2009 regarding the above-referenced proposed consolidated suitability rule, and I wanted to let you know that I concur with PIABA's comments and support them. PIABA is an important voice for the investing public, and its comments should be taken very seriously.

Jeffrey A. Feldman
505 Montgomery Street, Floor 7
San Francisco, CA 94111
Phone: 415-391-5555
Fax: 415-391-8888

From: Sal.Ferraro@remainindependent.com [mailto:Sal.Ferraro@remainindependent.com]
Sent: Thursday, June 25, 2009 5:39 PM
To: Comments, Public
Subject: More regulation is not needed

Dear Sir or Madam,

I am an insurance professional with over 40 years serving the public.

The insurance industry is already well regulated. Many seasoned agents are leaving the insurance field because of the numerous regulations we currently have to follow.

There would be no benefit to the consumer adding FINRA regulations to insurance products.

Both the consumer and taxpayer would be better served keeping FINRA away from insurance regulations and keeping its activities concentrating in areas they are truly knowledgeable in.

Sincerely,

Sal Ferraro, Independent Insurance Agent

From: martin.ferrell [mailto:martin.ferrell@knology.net]
Sent: Friday, June 26, 2009 9:19 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

I support the consolidation of FINRA rules governing suitability and know-your-customer (KYC) obligations. However, I **strongly oppose** any expansion of Rule 2111 to include "non-securities, services and strategies". I already firmly support all suitability requirements for the products I offer. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to my clients. I am a small one man firm. All brokers are not crooks, snake oil salesmen and thieves, but that is the way we are treated. You need to go after the bad apples and let the rest of us do our job. I already do everything I can to ensure I am doing the right thing for my clients. The additional burden this would place on me would be of no benefit to my clients and further it probably would do more harm to them by putting me out of business.

Sincerely,

Martin Ferrell
Financial Consultant
Ferrell Financial, LLC
Office: 850-872-0088
Fax: 850-872-1488
www.ferrellfinancial.com
securities offered through
LPL Financial
Member FINRA/SIPC

From: Brent Fewox [brent56@qwest.net]
Sent: Sunday, June 28, 2009 6:19 PM
To: Comments, Public

It astounds me that after what we have just gone through in the financial industry that you still feel the need to get involved in an area that has been for the most part protecting the my clients assets. There is no way that you can derive a risk element from a fixed or indexed annuity. Go ahead and do your thing to variable annuities. They are a bad product. Leave your nose and your poor oversight out of the fixed side of things. I know this is to the point, but I am sick and tired of a government that feels like it know better than "we the people"!!! Insurance companies have done just fine without you for many years. They even bailed the banks out in the 30's. If it isn't broken don't try and fix it. We see what the results of that has been.

Brenton L. Fewox, LUTCF

The Oxford Group, LLC

481 Quantum Road NE

Rio Rancho, NM 87124

505-891-9800

1-800-808-5633

From: calvin.finn@nmfn.com
Sent: Monday, June 29, 2009 3:46 PM
To: Comments, Public
Subject: FINRA - Suitability obligations

Dear FINRA Leaders,

I am a 23 year licensed Insurance professional and registered Financial Advisor. This letter is being written because I strongly oppose FINRA's expanding the suitability obligations to recommendations that do not involve securities.

I do support sanctions against those who promote unsuitable sales and misleading sales practices. Those responsible should be prosecuted and fined. However I do not believe FINRA should have jurisdiction over products which are not securities. Also, I don't believe FINRA nor the broker/dealers have the resources or expertise to oversee non-securities transactions. I don't feel it's right that FINRA should expand their authority to include non-securities products and services.

The insurance and other non-securities products are already subject to comprehensive regulation at the State level, by the state insurance departments and regulators. Putting further regulations from FINRA into the mix is only going to complicate an already regulated industry.

With everything that is forthcoming with this administration, Capitol Hill, the SEC and FINRA, there will be changes coming soon. For this reason, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for your consideration.

Respectfully,

Calvin M Finn, CLU, ChFC, CASL

Northwestern Mutual Financial Network

Calvin M. Finn, CLU, ChFC, *CASL, Financial Advisor*
156 S. Main, Hoisington, KS 67544
Office 620-653-7544 Fax 620-653-7760
calvin.finn@nmfn.com

As a representative of the Northwestern Mutual my mission is clear:

'To make a difference in the lives of those who choose our services. I help them achieve their financial goals and dreams; through a comprehensive planning process leaving them better off than when we first met.

'To provide that service which in the same circumstances, I would apply to myself and my family.

Calvin M. Finn

From: Fisher, David [mailto:dfisher@htk.com]
Sent: Tuesday, June 23, 2009 10:46 AM
To: Comments, Public
Subject: FINRA Regualtory NOtice 09-25

Dear Regulators:

I understand that the above referenced notice contains specific language that would dramatically expand FINRA and broker-dealers involvemnt in the conduct of representatives in the sales process of non-securties.

I am a Registered Representative that also sells non-securities insurance products and while I concur that close monitoring of sales practices should be accomplished in order to protect the public, I adamatly object to FINRA deciding that it will do that job. It would be self deciding to overide state insurance commissioner's duty in this area as well as burdening broker-dealers with oversight of all insruance transactions on the part of their Registered Representatives.

Further, the SEC, FINRA and private stakeholders are holding dicussions currently on the standard of care broker-dealers owe thier clients and potential changes in this area going forward. I think it would be quite arbitrary for FINRA to issue regulations basically folding the conduct of all finacial transactions under it's regualtions, particualarly while such debates are being carried out. In fact, FINRA's jurisdiction clearly was not meant to cover non-secuirties transactions.

David J. Fisher
Ackley FInancial Group, Inc
Addison, Texas

From: paul.fitzgerald@nmfn.com [mailto:paul.fitzgerald@nmfn.com]
Sent: Thursday, June 25, 2009 10:35 AM
To: Comments, Public
Subject: expanded authority

In the real world, FINRA has a full plate and expansion into non-security related issues is absurd. There are more than enough regulations and enforcers at the State and Federal level. If you will consider it a priority to enforce those rules and regulations already falling under your jurisdiction, our industry would not be in the shape it is today. Do the job you already have and do it well...that is not asking too much.

Northwestern Mutual Is 'America's Most Admired' for an Unprecedented 25th Year-Link

Paul W Fitzgerald, CLU, ChFC
Managing Director/ Financial Advisor
633 Chestnut Street, Suite 1100
Chattanooga, TN 37450

(423) 385-1402 office
(423) 490-3018 fax
paul.fitzgerald@nmfn.com

For more information and online access, please visit my personal website at: www.nmfn.com/paulfitzgerald.

For career opportunities, please visit our office website at: www.nmfn.com/chattanooga.

From: Daniel Flees [Daniel.Flees@tznet.com]
Sent: Monday, June 29, 2009 11:23 AM
To: Comments, Public
Subject: Oppose expansion of suitability obligations that do not involve Securities

FINRA,
Regulatory Notice 09-25
I believe that FINRA's authority should not be expanded to include non-securities products and services.
Neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.
thank you,
Daniel A. Flees, CMFC, LUTCF
Financial Advisor
McNeely Financial Services, Inc.
702 East Willow Drive
Spencer, WI 54479
715-659-4255
715-659-4194 fax
800-477-4122
www.mcneelyfinancial.com

From: jefloydjr@aol.com [mailto:jefloydjr@aol.com]
Sent: Wednesday, June 24, 2009 1:17 PM
To: Comments, Public
Subject: In creased Finra responsibilty

FINRA should limit its enforcement to issues that deal with stocks and bonds. More bureaucracy and more expense , these past 2 years show you do a poor job. John Floyd. Floyd Financial Services, Florence , SC 29502

From: Gerald Foran [mailto:gforan@gfpension.com]
Sent: Friday, June 26, 2009 3:20 PM
To: Comments, Public
Subject: FINRA Notice 09-25

I strongly oppose any expansion of Rule 2111 to include "non-securities, services, and strategies". I believe this could be harmful to brokers and clients.

GERALD F. FORAN, JR.
CERTIFIED PENSION CONSULTANT
GF PENSION CORP.
60 WEST BROAD STREET, SUITE 302
BETHLEHEM, PA 18018
PHONE: (610) 974-9525, EXT. 16
FAX: (610) 974-8437
WWW.GFPENSION.COM
GFORAN@GFPENSION.COM

From: Ralph Ford [mailto:ralph.ford.b588@statefarm.com]
Sent: Tuesday, June 23, 2009 2:19 PM
To: Comments, Public
Subject: FINRA Expansion

If it is not a security then Finra should not be involved. They have enough to do as it is. We don't need more people on a steep learning curve into other industry products.

From: CHARLES FRADKIN [cfrad@verizon.net]
Sent: Wednesday, June 24, 2009 12:41 PM
To: Comments, Public
Subject: FINRA

I am a registered insurance agent who opposes expansion of FINRA,s suitability obligation for non securities products.

From: william.franke@raymondjames.com
Sent: Wednesday, June 17, 2009 12:51 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25 - Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Please reply to william.franke@raymondjames.com

I am writing to express my concern about FINRA Regulatory Notice 09-25 which proposes to consolidate the existing rules governing suitability and the know-your-customer obligations into a new FINRA Rule 2111 (Proposed Rule). As a financial advisor, I know the importance of making suitable recommendations to my clients to assist them in achieving a safe and secure retirement, save for the education of their children, or achieve other financial objectives. I support efforts to improve customer protection.

. The consolidation of the NASD and NYSE rulebook into a single rulebook is a good idea. However, it should not be used as an occasion to EXPAND the reach of the rules. This is especially important in light of the new administration initiatives to overhaul the regulatory structures. Do not try to anticipate those changes. Wait until Congress acts.

. An important issue in this debate is the standard of care owed by a financial advisor to a client. The resolution of this debate has the potential to make the Proposed Rule a moot point. As a result, I urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

I encourage FINRA to take these concerns into consideration as you advance the Rule Proposal.

Thank you for considering my comments.

Sincerely,

Mr. William Franke
CFP
Raymond James Financial Services
15579 Duck Trail Lane
Apple Valley MN 55124
Email: william.franke@raymondjames.com

From: Douglas Franklin [mailto:cfni@att.net]
Sent: Tuesday, June 23, 2009 10:03 AM
To: Comments, Public
Subject:

I am a licensed insurance professional with nearly 40 years of excellent experience. While I agree to remove those from financial practices that provide unethical behavior, I oppose FINRA's attempt to expand beyond the services you now oversee. I used to have a broker-dealer relationship but closed that part of my business at the end of 2004. I have found that the regulators did not provide the safety and guidance for the public that I have followed as a CLU. Therefore, any expansion of authority by people who regulate broker-dealers into the professional area of life insurance, health insurance, long term care insurance, disability income insurance, and fixed annuities would be regarded as unwelcome, unnecessary, unwarranted and unproductive for the consumer. The insurance profession is adequately supervised by the NAIC and each state's insurance commissioner. We have some problem people but they are few in number and are adequately disciplined by each state's laws. I believe your organization has enough to do within the equities fields and more authority does not improve your circumstances.a

Douglas R. Franklin, CLU, ChFC
President
Champagne Financial Network
79 Woodfin Place, Suite 101
Asheville, NC 28801
Phone: (828) 252-6815
Fax: (828) 252-6829
www.champagnefinancialnetwork.com

From: elaine.fremling@gmail.com
Sent: Sunday, June 28, 2009 3:36 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Elaine Fremling
1208 42 Ave. N
Fargo, ND 58102-5316

June 28, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am writing because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. I have working as an insurance and securities representative for the past 32 years.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in duplicate and possibly conflicting regulatory requirements which will detract from the goal of consumer protection.

It would be inappropriate for FINRA to expand or revise current suitability requirements while the debate for standards of care is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Elaine Fremling
701-232-7681

From: james.freudenberger@axa-advisors.com
[mailto:james.freudenberger@axa-advisors.com]
Sent: Tuesday, June 23, 2009 11:05 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Jim Freudenberger
205 W. 7th Ave
Stillwater, OK 74074-4041

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

We currently have many compliance and regulatory forms and procedures to follow, when recommending securities to clients and prospects. Please do not make it an additional, unessacary burden, in requiring these same procedures to be followed for non-security products. I would ask that the enforcement of the current rules and regs be tightened, so that violators would receive proper sanctions and also be set out as an example, so that others would not be tempted to take short cuts, make bad recommendations, commit fraud, etc.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Jim Freudenberger
405-377-5311

VIA ELECTRONIC MAIL

June 17, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Consolidated FINRA Rulebook, proposed FINRA Rule 2111 - Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

Financial Industry Regulatory Authority (FINRA) published a Regulatory Notice 09-25 requesting comment on the consolidation of NASD Rule 2310, addressing suitability obligations and NYSE Rule 405, addressing know-your-customer obligations. If adopted, with revisions, the proposed FINRA Rule 2111 "Governing Suitability and Know-Your-Customer Obligations" could codify various interpretations regarding the scope of the suitability rule, clarify the information to be gathered and used as part of a suitability analysis and create a clear exemption for recommended transactions involving institutional customers, subject to specified conditions.

MWA Financial Services, Inc. is a wholly owned broker/dealer of an insurance company. The firm's business mix is simple, consisting of non-proprietary mutual funds and variable products, general securities through a fully disclosed brokerage arrangement and a proprietary variable annuity. The vast majority of our representatives are Series 6 licensed. We appreciate the opportunity to comment on this proposed rule.

We applaud FINRA for drawing the distinction between a representative either making a recommendation or receiving a customer order concerning a securities transaction. At times, customers believe certain transactions would be beneficial in a new or existing account. At the same time, a representative may not agree that the transaction is suitable,

but is not able to dissuade the customer. The representative makes a decision to effect the trade (not recommended) in order to retain the customer and documents the transaction as a "non-solicited trade".

However, our firm has two concerns with Proposed Rule 2111 that we would like to bring to FINRA's attention:

First: We are concerned with the "reasonable expectation that the customer has the financial ability to meet such a commitment" language added to the suitability requirements in .03 Customers' Financial Ability of Rule 2111. Our firm and associates are acutely aware of the significance of thoroughly knowing-your-customer. We train our representatives and reviewing principals on suitability, what information to collect, how to obtain specific information as directed in NASD Rules 2110, 3011 and SEC 326 and how to use that information to provide the best possible products and services we offer to meet the needs of each customer.

From a representative's prospective, with the information provided from an investor at the time of the application, reasonable expectation that the investor will be able to meet the financial commitment could very quickly become unreasonable with the loss of a job particularly given the economic reality of today. Further, how can a reviewing principal be expected to judge the reasonable ability of a customer to meet a financial commitment at some point in the future?

We agree that any suitability rule should be fundamental to fair dealing and should promote ethical sales practices and high standards of professional conduct, thereby, protecting the investor from securities abuse. However, to meet this particular proposed expectation and comply with this proposed wording, firms and their associates would need to develop the art of fortune telling and how to read a crystal ball.

How many times has all of humanity taken a look at their own past and proclaimed, "if only I had known <you can fill in the blank>, I would have done things differently." Too

often FINRA uses hindsight and after the fact knowledge to apply "**reasonable**" at the point of sale.

As the rule book consolidation progresses, we encourage FINRA to apply reasonable to "at the time of the transaction, with the knowledge provided by the investor" and not apply the "should have known" to circumstances that occur some time in the future or after the transaction. This proposed wording allows for too much interpretive latitude.

Second: Under The Scope of the Proposed Suitability Rule the last paragraph, last sentence: "In light of the more expansive application of some FINRA rules, such as those addressing just and equitable principles of trade and communications with the public, and given the seamless nature of a broker-dealer's business in providing financial services, FINRA also seeks comment on whether it 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."

Our firm strongly opposes FINRA's proposal to expand suitability obligations to any recommendations beyond the scope of their jurisdiction. In addition, we would suggest FINRA clearly define each term so firms and regulators could consistently apply the rules. For example, most state insurance regulations require that the term "investment" not be used in conjunction with traditional life products, including fixed annuities. Therefore, the term "investment" must be clearly defined as a securities product and not apply that term to a fixed annuity.

We understand and daily work in the realm of "the seamless nature of a broker-dealer's business in providing financial services." However, to attempt to apply the suitability rule as significant in promoting fair dealing with customers and ethical sales practices, beyond as it pertains to securities, definitely is outside FINRA's purview.

We encourage FINRA to consider a rule that explicitly applies suitability obligations to a recommended transaction or investment strategy involving only a **security or securities**. We believe a distinct clarification stated in the new rule would take some of the consternation out of the longstanding decisions and other interpretations by regulators attempting to govern beyond the scope of the securities by stating that NASD Rule 2310 covers both recommended securities and strategies in general. Therefore, we strongly oppose a more expansive application of the rule to have the proposed suitability rule apply to any recommendations concerning non-securities products or strategies.

For over 60 years, The McCarran Ferguson Act has allowed each state to regulate its own insurance sales practices. Most states have already enacted "Suitability Standards" for representatives that sell insurance products. Representatives are required to fill out certain forms that cover, financial status, tax status, investment objectives and any other information considered pertinent to be able to make a sound recommendation of insurance to the customer.

Our representatives sell traditional life insurance products through our parent insurance company. The issuing of those products is the responsibility of the parent company which is regulated by the individual states as mentioned above. Our firm does not offer these products. However, this proposal could blur those lines of responsibility and add a redundant layer of due diligence to the issue process, thereby, opening the door for conflict between two separate suitability reviews and delaying delivery of the contract. It would create a financial, as well as, a personnel burden, for many similar firms. Processing systems would be bogged down while affording no meaningful protection for investors or providing a safeguard to the securities market.

Our representatives also recommend financial strategies, many that do not involve securities. Under this proposal, the firm would be responsible for the suitability of any strategy recommended. How could a firm be expected to properly supervise a trust established and held at a bank? How could a firm be expected to adequately supervise an

estate plan created by an attorney? It is preposterous to hold firms accountable for recommended strategies outside of their stated responsibility as a member of FINRA.

Further, FINRA should not place the burden on firms, expecting them to monitor representatives' outside business activities where there is no possibility of affecting the securities markets or investor. Firms would need to train registered principals well beyond the scope of securities. The inconceivable consequences would be firms taking the role of "big brother", watching the representatives' every move and having adequate principals with the knowledge to correctly supervise the activity... **an impossibility**.

FINRA needs to focus on protecting the **investing** public. In the consolidation process of harmonizing and streamlining existing rules, FINRA needs to enact and then enforce rules within its jurisdiction. According to FINRA publications, "FINRA is a trusted advocate for investors, dedicated to keeping the markets fair, ensuring investor choice and proactively addressing emerging regulatory issues before they harm investors or the markets." This statement does not allow for FINRA to venture into territory outside of the securities industry. FINRA "is the largest independent regulator for all securities firms doing business in the United States. All told, FINRA oversees nearly 4,900 brokerage firms, about 173,000 branch offices and approximately 651,000 registered securities representatives." We encourage FINRA to focus on its stated mission.

We appreciate that the consolidation of rulebooks must be a daunting task, assuring that all contingencies are regulated adequately. However, we feel the scope of the consolidated rule book needs to focus on just and equitable trade as it pertains to securities only.

Sincerely,

Pamela Fritz
Chief Compliance Officer
MWA Financial Services, Inc.

From: Ken Gamelin [mailto:kenngamelin@comcast.net]
Sent: Thursday, June 25, 2009 7:52 PM
To: Comments, Public
Subject: Jurisdiction over non-securities
Importance: High

I am writing to urge the "powers that be" at FINRA to consider dismissal of proposals and initiatives for bring oversight of non-security investment products under the purview of FINRA. These investment products are already regulated by the states -as they should be - and there are, in my opinion, sufficient rules and regulations in place for their suitability.

I have been a financial professional for over 35 years, and I take my professional oaths VERY seriously.....but we do NOT need OVERREGULATION.....I respect the presence and purpose of FINRA, and firmly believe it should ONLY oversee securities. Current measures in place by state regulators are doing the job. **"If it ain't broke.....don't fix it!"**

Sincerely, and thoughtfully,

Ken Gamelin, CSA, CLU, ChFC, LUTCF
Chartered Financial Consultant and Certified Senior Advisor
Long-term Care Specialist
Authorized Benefits Representative for Colonial Supplemental Insurance
Registered Representative, writing securities through
First American Capital & Trading Corp. - Member of NASD, SIPC, MSRB
1499 W.Palmetto Park Rd., Suite 250, Boca Raton, FL 33486/Ph.: 561-948-7470

My phones: 561-588-5080 or 315-9266 (cellphone)
Fax: 561-588-1444
Website: http://www.kengamelin.com

From: bret gardner@nmfn com
Sent: Tuesday, June 23, 2009 12:25 PM
To: Comments, Public
Subject: I strongly object...

to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I am a licensed advisor with Northwestern Mutual Financial Network and believe that registered representative that engage in false and misleading practices should be pursued and prosecuted to the fullest extent. Make no mistake, a few bad eggs should not make the process any more difficult for those that put the consumers best interest first and foremost.

Also note that FINRA lacks the knowledge, expertise and resources to regulate non security products and services. These regulations are already being extensively handled at the state level. Although not perfect the power of regulation at the state level is critical and I believe if an issue arises, it will be dealt with in a more expedited manor given their responsibility to their local constituents.

Finally given all the discussion and debate that is going on, and will be going on in the months to come, surrounding reform, I believe that now more that ever is NOT the time for FINRA to spend the time, energy and resources in matters of regulating non-security products and services.

Once again I'd like to state that I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I appreciate your time and would hope that you would respectively consider my position on this matter.

Bret Gardner / Financial Advisor

bretgardner.nmfn.com

Insurance/investments/ideas

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ADV

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E-mail: bret.gardner@nmfn.com
Cell: (720) 352-5439

From: kdgardopee@verizon.net [mailto:kdgardopee@verizon.net]
Sent: Thursday, June 25, 2009 3:39 PM
To: Comments, Public
Subject: Expansion of Suitability Obligations to products that are not securities

Dear Sir or Madam:

I am writing to express my concern over the possibility of expanding FINRA oversight of suitability to products that are not securities.

As an Investment Advisor Representative, I am concerned about misconduct by some of those who work in this industry. However, I firmly believe that better enforcement, including the hiring of additional enforcement personnel, makes far more sense than adding additional regulations, especially for products that do not fall under FINRA's regulatory authority. Additional regulation will, in the long run, make things far more difficult for those of us who do our very best, day in and day out, to make recommendations that are in the best interests of the clients we serve. Those who would flaunt these regulations will continue to do so. I think customers, and the industry as a whole, will be far better served by concentrating on getting rid of the bad apples in our barrel.

Given policymakers are considering sweeping changes to the financial services industry, I think it would be far better to make sure that the new regulations have teeth and will reduct misconduct. Adding to the hodgepodge of regulations among multiple regulatory agencies is more likely to create cracks through which miscreants will wriggle rather than create an environment that will discourage misconduct.

Thanks for your time. -Kenneth D. Gardopée, LUTCF

From: Gates, James [mailto:james.gates@axa-advisors.com]
Sent: Wednesday, June 24, 2009 2:42 PM
To: Comments, Public
Subject: Finra Reg notice 09-25.

Marcia E. Asquith
Office of the Corporate Secretary - FINRA
1735 K Street, NW
Washington, DC 20006

Dear Ms,

As a licensed insurance professional and registered representative I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Insurance and non-security products are already heavily scrutinized on a state by state level. Expanding FINRA's oversight could cause conflicting and confusing regulatory requirements which will detract from the goal of protecting the consumer.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.Thank you for considering my views on the issue.

James W. Gates, ChFC, CLU

James W. Gates, Jr., CLU, ChFC
Fells Ridge Financial
Financial Consultant
Phone (973) 401-2379
Fax (973) 401-1623
www.fellsridgefinancial.com

June 24, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

RE: FINRA Notice to Members 09-25 Comment Letter

Dear Ms. Asquith:

Cambridge Investment Research ("Cambridge") is a fully disclosed retail broker-dealer registered to conduct business in all domestic jurisdictions, with approximately 1400 registered representatives. Cambridge is an independent broker-dealer and all of our representatives are independent financial advisors.

Please accept this letter in response to the request for comments with respect to NTM 09-25 regarding the proposed rule governing suitability and "Know Your Customer" obligations into a new FINRA Rule 2111 (Proposed Rule). We appreciate the opportunity to comment on the proposed FINRA regulation. The Proposed Rule would have important implications for independent broker-dealers, independent financial advisors and their clients by greatly expanding the scope of a financial advisor's suitability obligation.

While our financial advisors are accustomed to gathering detailed information from their clients and making suitable securities transaction recommendations based upon this information, the Proposed Rule's requirements are of concern for three important reasons outlined below.

Cambridge strongly opposes FINRA's effort to expand suitability requirements to non-security investment products or services. Insurance products, investment advisory services, and other products and services offered by independent financial advisors are closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting and contradictory regulatory requirements that do not advance the common goal of investor protection. As a result, we oppose FINRA's efforts to expand the suitability obligations to include matters over which it does not have jurisdiction.

We agree that a client's investment time horizon, liquidity needs and risk tolerance are important considerations; however we believe that it is best analyzed at the overall portfolio level, rather than by each individual securities transaction as the Proposed Rule suggests. Many of our clients have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity,

risk and anticipated holding periods. Thus, we oppose the expansion of suitability criteria.

The Proposed Rule also seeks to expand the suitability review to information known by the broker-dealer. Our independent financial advisors operate their own small businesses in communities throughout the country. They can compete with other financial advisors who may be registered with the same broker-dealer. As a result, it is quite possible for an independent broker-dealer's records to include information that was collected by one financial advisor, but unknown to the client's current financial advisor. The Proposed Rule would require independent broker-dealers to engage in a search of their entire internal client database along with the records of the affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. We believe this requirement would be unduly burdensome and unlikely to result in a significant improvement to investor protection. We therefore, oppose this aspect of the Proposed Rule.

Lastly, we believe that this Proposed Rule is premature. 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. One aspect of this project is to determine the standard of care owed by a financial advisor to a client. The result of this debate could make the Proposed Rule a moot point. We believe it would be prudent for FINRA to shelve this proposal until the outcome of the broader standard of care issue. This would avoid the necessity of broker-dealers and financial advisors make major changes to achieve compliance with the Proposed Rule only to later rewrite policies, procedures and update account information to comply with a revised standard of care.

I appreciate the opportunity to comment. Please let me know if you have any questions.

Sincerely,

Julie J. Gebert
AVP, Compliance
Cambridge Investment Research

From: Mark George [mailto:mg@issueins.com]
Sent: Thursday, June 25, 2009 12:14 PM
To: Comments, Public
Subject: A few Bad apples

Please do not apply "fiduciary" standards to fixed life insurance. We do not need more regulation on these products. It will give a big advantage to the big organizations who caused the financial crisis in the first place. You are going to put the honest small guys out of business. Even if there are a few bad apples amongst the small guys the damage from a small guy does not damage the system. The end result of over regulation will be less citizens protecting their interests.

Mark George, CFP®, CLU®
Chief Executive Officer
ISSUE Insurance Agency
1475 Worldwide Place
Vandalia, Ohio 45377
Ph # (937) 890-4991 x216
Toll Free Ph (800) 762-7500 x216
Fax# (937) 890-1909
Toll Free Fax (800) 746-7329
www.issueins.com

-----Original Message-----
From: David Gibson [mailto:davidjgibson@ft.newyorklife.com]
Sent: Thursday, June 25, 2009 12:05 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

The focus of FINRA should only be on regulations for the sale of securities. It should not be on sales of non-registered products. I am not a registered representative....don't want to be a registered representative. I have sold life insurance for 44 years and functioned well under the insurance regulations of the State of Tennessee. It is unnecessary for non-registered products and sales of non-registered products to be regulated by the FINRA.

J. David Gibson, CLU
Agent
New York Life Insurance Company
840 Crescent Centre Drive, Suite 500
Franklin, TN 37067
615 224-9500

From: kevin.gilman@nmfn.com [mailto:kevin.gilman@nmfn.com]
Sent: Friday, June 26, 2009 11:47 AM
To: Comments, Public
Subject: Expansion of FINRA's oversight of suitability!

First off, I am a registered rep in the insurance and investment industry and have been for 28 years. The problem I see with blanketing this incursion into more oversight in the suitability of "investment products and services" under one great big umbrella is the loss of clarity, as to who is over-seeing what!

The very phrase: "investment products & services" should ONLY apply to SECURITIES, full stop! A helpful itemized list of all those things that ARE securities could then be added as an addenda, for those who aren't sure. Then you'll have your territory clearly staked out and know what you're regulating!

If, however my relationship with my client extends to "comprehensively" assisting him in analyzing his Risk needs, in relation to his Accumulation objectives, things start to become a bit intertwined! But, we have insurance commissions to assure we follow their guidelines and we have Advisory oversight to assure that we're making recommendations with the client's best interests in mind. If we're only providing products& services for a part of the client's needs, we still have to have a comprehensive understanding of his financial situation!

I believe we have a vast array of financial products available to assist clients and substantial amounts of regulation to assure clients that the most appropriate solutions are being suggested by their advisors. What bears more scrutiny on YOUR part are the Vetting and Approval of new & more sophisticated financial products BEFORE they are allowed into the market. Somehow, I don't believe the public is well served by the thousands of funds that constantly flow & ebb into & out of the market, nor the insurance products being brought out to appear as a single solution for all situations. (Maybe some of those who are scrambling to fill in holes in their reserves currently should have been left to suffer the consequences of attaching unrealistic promises & benefits to their policies!)

Bottom line: Beef up the staff you've got and do a more thorough job in the areas you're already mandated to regulate!

P. Kevin Gilman

NORTHWESTERN MUTUAL FINANCIAL NETWORK

Life, NMIS, Series 6

P. Kevin Gilman
150 E. 4th Street: Oswego, NY 13126
Telephone: (315)343-2380 Fax: (315)343-9286
kevin.gilman@nmfn.com

From: Wayne Gledhill [mailto:Wayne.Gledhill@benfinancial.com]
Sent: Wednesday, June 24, 2009 9:20 PM
To: Comments, Public
Subject: Expansion of Suitability Obligations

FINRA,

I want to express my opposition to any expansion of suitability obligations in so far as it contains insurance products. I feel than any expansion is unwarranted, does not increase any measure of protection for the consumer and simply adds another layer of bureaucracy and its attended costs on the consumer.

Wayne F. Gledhill, CLU

Wayne F. Gledhill, CLU
Oxford Financial Group
455 East 500 South #305
Salt Lake City, Utah 84111
Tel. (801) 595-1730 Fax (801) 595-1759

FARMERS

Rod Goeman Agency
Insurance and Financial Services Agent
120 East Center St., Suite 1
Madison, SD 57042
Phone: 605-256-6334
Fax: 605-256-0101
Home: 605-256-4001

FINRA
Marcia E. Asquith
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

June 23, 2009

Dear Marcia:

Expanding FINRA's suitability recommendations to products that do not involve securities would be unnecessary and lacks jurisdictional oversight in recommendations that FINRA has no authority over.

As a licensed insurance agent and registered representative of Farmers Financial Solutions, LLC, this proposal would appear to be a knee-jerk reaction at best.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to fines and sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. In my opinion, FINRA's authority should not be expanded to include non-securities products and services.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Rod L Goeman-Insurance and Financial Solutions Representative

From: Stanley F. Goodin [sfgoodin@ft.newyorklife.com]
Sent: Monday, June 29, 2009 1:12 PM
To: Comments, Public
Subject: Finra Reg notice 09-25

I am a life insurance agent & a reg rep & I don't think FINRA should be regulating non-securities products! They are regulated by each state & that is plenty!

Sincerely,

STAN GOODIN

Stanley F. Goodin, CLU, ChFC, AEP, LUTCF

Financial Adviser

Eagle Strategies, a Registered Investment Adviser

Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC)

245 E. Liberty, Suite 405

Reno, NV 89501

T 775/322-2100 F 775/322-2259

From: Denise Gott [denise@ltcfp.net]
Sent: Thursday, June 25, 2009 11:58 AM
To: Comments, Public
Subject: FINRA Expansion of Suitability Rules
Importance: High

Dear Ms. Asquith,
I am a long time member of NAIFA Cleveland and currently hold the office of President. I have been in the insurance business for 18 years and I have sold both securities and non-security type products. My specialty is long term care insurance planning. While I understand the need for regulation and oversight in light of recent events in the financial services industry, I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Having focused on insurance products for many years, I am acutely aware that insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please accept this recommendation when considering any changes to FINRA's expansion of suitability rules – it would only hinder the flow of business and make it more difficult for us to help our clients.

Respectfully,

Denise Gott, MBA, CLTC
VP Great States Region
LTC Financial Partners, LLC
1411 Rosewood Ave Suite 207
Cleveland, OH 44107
440-461-5131 - O
440-461-4503 - F
440-223-5705 - C

www.LTCFP.US/DeniseGott

From: Gray, Jim [mailto:jim.gray@countryfinancial.com]
Sent: Tuesday, June 23, 2009 11:27 AM
To: Comments, Public
Subject: Opposing some of Regulatory Notice 09-25

I **oppose** 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*."
FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements.

Thank you,

James R. Gray, CPA
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June 18, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Request for comments, FINRA Reg. notice 09-25
Suitability and "know your customer"

Marcia,

Thank you for allowing me to comment on the above referenced rule. I appreciate the opportunity.

I cannot stress how pleased I am to see FINRA finally outlining specifics when discussing customer suitability. While there remains wiggle room in language like "reasonable efforts", "reasonable basis" and 'reasonable recommendations", FINRA has done an outstanding job in getting relatively specific.

I would recommend no changes to 2111(a).

I am not qualified to address institutional customers covered in 2111(b).

In the supplementary material, .01 general principals, is very well written.

In my opinion, .02 components of suitability should be broken down so that each of the three obligations, reasonable basis, customer-specific and quantitative have their own section. In other words, reasonable basis would become .02 (a), customer-specific .02 (b) and quantitative .02(c).

Section .03 is well written.

Section 2090 appears fine but in the supplementary material I would refer back to rule 2111 for the requirements of what documentation is required.

Thank you again for this opportunity to comment.

Frederick T. Greene, CIMA
Senior Vice President, Portfolio Manager
Woodforest Financial Services, Inc.
Financial Advisor, Raymond James Financial Services, Inc.

Cc: Jeanie Jans FINRA, Don Runkle RJFS

Max Greene Financial Services Group, LLC
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Post Office Box 97726, Raleigh, North Carolina 27624-7726
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22 June 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Dear Madam,

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that **do not involve securities**. Such as life, disability, health and long term care insurance.

At the outset, let me clearly state that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should **not be expanded to include non-securities products and services.**

Another reason why the expansion of FINRA's suitability obligations is unwise is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that **do not involve securities**. Thank you for considering my views on this issue. I am –

Sincerely,

Max Greene

Barbara Black
Charles Hartsock Professor of Law
Director, Corporate Law Center
University of Cincinnati College of Law

Jill I. Gross
Professor of Law
Director, Pace Investor Rights Clinic
Pace University School of Law

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Re: Proposed FINRA Rule 2111

Dear Ms. Asquith:

We are writing to comment on FINRA's Proposed Rule 2111, which would supplant NASD Conduct Rule 2310 and NYSE Rule 405 in the Consolidated FINRA Rulebook. We are law professors who have written and lectured widely about the obligations of broker-dealers to their customers. We also have represented investors in securities arbitrations who have alleged violations of NASD Conduct Rule 2310.

NASD Conduct Rule 2310 imposes on members and associated persons the duty to recommend only suitable securities to customers and is an aspect of FINRA Rule 2010's requirement that members and associated persons observe "high standards of commercial honor." Therefore, we support the concept of incorporating NASD Rule 2310 and the analogous NYSE Rule 405 into the Consolidated FINRA Rulebook, as well as codifying various interpretations regarding the scope of the suitability rule. In particular, we support the language clarifying that the obligation encompasses investment strategies, specifying the information that members must gather and use as part of a suitability analysis, and delineating the three suitability obligations (reasonable basis, customer-specific and quantitative).

Failure to Include NASD 2310 Interpretive Material

However, we are deeply concerned that the proposal appears to eliminate, without explanation, some of the current 2310-2 Interpretive Material and does not appear to be transferring that interpretive material into the Consolidated FINRA Rulebook with Proposed Rule 2111. For example, IM 2310-2 explains to members that FINRA can discipline them for improper sales practices and gives specific examples of common types of broker misconduct, including excessive trading, unauthorized trading, and fraud. This interpretive material is the only place in the NASD Conduct Rules explicitly prohibiting unauthorized trading and has been the basis of enforcement actions for

unauthorized trading.[1] Including some, but not all, of the examples of improper sales practices in the new Rule and Supplementary Material may suggest that the excluded practices are no longer considered improper. While we do not believe that FINRA intends to disavow the substantive content of IM 2310-2, the failure to transfer it into the Consolidated FINRA Rulebook, whether as part of Proposed FINRA Rule 2111 or with FINRA Rule 2010 (as examples of violations of the rule requiring that members observe just and equitable principles of trade in the conduct of its business) would diminish the clarity that the interpretive material provides to members. Thus, we cannot support the replacement of NASD Conduct Rule 2310 unless that interpretive material is transferred into the Consolidated FINRA Rulebook.

Problems with Drafting of Proposed Rule 2111

In addition, we do not support certain specific language of Proposed FINRA Rule 2111 as currently drafted, as we believe that it is not clear in certain places. We itemize below our concerns and suggested edits with respect to both the proposed rule itself and the proposed supplementary material.

Suitability - Proposed 2111(a)

- This subsection consists of one very long sentence, which is confusing as written. We recommend breaking it down into at least two sentences, and re-ordering some of the phrases. The first sentence should start out with the phrase: "When making a recommendation, a member or an associated person must have a reasonable basis to believe...," so it is clear on its face that the requirement applies to a recommendation.

- In the third line, we believe the use of the word "known" leaves a loophole for associated persons to claim they didn't know certain information when they consciously avoided learning it. We believe the standard should be "known or should have known," to more accurately reflect the negligence standard consistently applied in FINRA enforcement actions alleging violations of NASD 2310.[2]

- The second to last line uses the word "reasonable" to modify the information the member or associated person should consider when making recommendations. We strongly believe that "reasonable" is the wrong word in this context, as it suggests that the member or associated person can subjectively determine what information

[1] *See* In the Matter of the Dept. of Enforcement vs. Baxter, 2000 WL 535170 (N.A.S.D. Apr. 19, 2000) (affirming sanction against associated person for unauthorized trading under IM 2310-2).

[2] *E.g.*, Dept. of Market Regulation v. Respondent, Disc. Proceeding No. 2005000191701, 2008 WL 4386776 (N.A.S.D.R. Apr. 30, 2008) (imposing sanctions for 2310 violations when respondent should have known additional information about the customers' financial condition); Dept. of Enforcement vs. James B. Chase, Complaint No. C8A990081, 2001 NASD Discip. LEXIS 30 (Aug. 15, 2001) (finding recommendation unsuitable when respondent should have realized customer would have to liquidate shares in the account to pay a margin call because the account was 100% of her liquid assets).

it/he/she deems worthy of considering, not what a reasonable, securities professional must consider. A better word would be "material" or "useful."

2111 Supplementary Material

- FINRA should re-draft the supplementary material section in the active voice and in plain English, to make it clear which parties have which responsibilities. Unclear, passive sentences include: In .01, "sales efforts must be undertaken"; In .02, "when viewed in isolation,"; "when taken together in light of..."

- The third line of .02 should use the "and/or" convention rather than just "or."

- The 11th line of .02 uses the term "customer's profile," but that term is not defined in the referenced section (2111(a)). We suggest that FINRA add a more precise definition.

- The definition of "quantitative unsuitability" in .02 uses the term "unsuitable." It seems circular to define a type of unsuitability with the word "unsuitable."

Know Your Customer – Proposed 2090

We believe FINRA should replace the word "essential" on the second line of Proposed Rule 2090, as the word used in this context can mean "barebones." We do not believe this is the meaning FINRA intends. We suggest replacing it with the word "material."

Expanding Suitability Obligation To Recommendations of All Investment Products

FINRA also seeks comment on whether it should propose expanding suitability obligations to recommendations of all investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities. Increasingly, broker-dealers offer their customers a variety of financial products; in addition, many broker-dealers permit their associated persons to offer their customers financial products as private securities transactions pursuant to NASD Rule 3040 or outside business activities pursuant to NASD Rule 3030. We support a revision of proposed Rule 2111 to include all investment products, services and strategies for the following reasons.

First, in some instances it may be unclear whether the product is a security as defined in the federal securities laws.[3] As a result, associated persons have marketed many types of schemes, including promissory notes, prime bank schemes and ponzi

[3] *See, e.g.*, Complaint, Amer. Equity Life Ins. Co. v. SEC, Case No. 09-1021 (D.C. Cir.) (challenging SEC's adoption of a rule regulating indexed annuities); SEC v. Life Partners, Inc., 87 F.3d 536 (D.C. Cir. 1996) (holding that viatical settlements were not securities under federal law).

schemes, to the public, based on promoters' assertions that these schemes did not involve securities.[4]

Second, because financial products have become more complex and difficult for many customers to understand, customers of necessity have come to rely on their brokers' advice for investments and strategies that meet their financial situation and investment objectives. For example, in the wake of an earlier downturn in the equity markets, NASD observed that brokers and retail investors showed increased interest in non-conventional investments (NCIs) that frequently have complex terms and features. It reminded its members that "the fact that an investment is a NCI does not in any way diminish a member's responsibility to ensure that such a product is offered and sold in a manner consistent with the member's general sales conduct obligations."[5]

Finally, and most fundamentally, members and associated persons fail to observe the "high standards of commercial honor and just and equitable principles of trade" required by FINRA Rule 2010 if they recommend any unsuitable financial product, service or strategy to their customers. NASD and FINRA have long recognized that sales efforts must be judged by the Rules' ethical standards, "with particular emphasis on the requirement to deal fairly with the public."[6] Thus, for example, in 2005 NASD expressed concern about the manner in which associated persons were selling unregistered equity-indexed annuities (EIAs) and the absence of adequate supervision of these sales practices.[7] Without seeking to resolve the issue of whether any particular EIA was an insurance product or a security, NASD emphasized that because of the complexity of EIAs a broker may have difficulty determining whether the features of any particular product were suitable for his customer. Accordingly, it encouraged firms to adopt supervisory procedures to protect their customers, including supervision over the suitability analysis and other sales practices associated with the recommendation of unregistered EIAs in the same manner that it supervises the sale of securities. More recently, Richard G. Ketchum, Chairman and CEO of FINRA, has stated that "[i]t has long been urged by FINRA—and it is a personal mission of mine—that America's 90 million investors should receive the same level of protection no matter which financial services or products they select."[8]

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[4] *See* NASD NOTICE TO MEMBERS 01-79 (NASD Reminds Members of Their Responsibilities Regarding Private Securities Transactions Involving Notes and Other Securities and Outside Business Activities) (Dec. 2001).

[5] NASD NOTICE TO MEMBERS 03-71 (Non-Conventional Investments) (Nov. 2003).

[6] IM-2310-2 (Fair Dealing with Customers).

[7] NASD NOTICE TO MEMBERS 05-50 (Equity-Indexed Annuities) (Aug. 2005); *see also* NASD Rule 2212(g)(2) (Telemarketing) (regulating any telephone solicitations "for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services").

[8] *See* Rick Ketchum, Remarks at the NAVA Government & Regulatory Affairs Conference (June 8, 2009), available at http://www.finra.org/Newsroom/Speeches/Ketchum/P118889; *see also* Rick Ketchum, Testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate (Mar. 26, 2009) (stating that "at the very "least, our system should provide investors with the following protections: ...

In short, a broker is not dealing fairly with his customer if he makes a recommendation of any product, service or strategy without having a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for his customer. Accordingly, we do not view the proposal as an *expansion* of the brokers' obligations; rather the proposal would make explicit what the SRO Rules have consistently required from members and associated persons. We support a revision of proposed Rule 2111(a) to incorporate explicitly a suitability obligation that is not limited to securities.

Thank you for the opportunity to make these comments.

Sincerely,

Jill Gross

Barbara Black

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every product marketed to a particular investor is appropriate for recommendation to that investor"), available at http://www.finra.org/Newsroom/Speeches/Ketchum/P118298.

From: Jerry Grove [mailto:Jerry_Grove@glic.com]
Sent: Tuesday, June 23, 2009 11:01 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

After 27 years as a registered rep and a licensed insurance professional, I have come to the conclusion that less federal involvement and the more state involvement in my business, the better for all concerned. I strongly object to expanding FINRA'a suitability obligations to recommendations that do not involve securities. Insurance products are already subject to comprehensive regulation (at the state level). FINRA's expansion could only muddy the water and create more layers of bureaucracy.

This would impose an additional burden, not only to insurance professionals, but to FINRA and broker/dealers who do not have the resources to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securites products and services.

Thank you for considering my views.

Jerry N. Grove, CLU
Grove & Associates
Redbud Financial Group
216 SE Frank Phillips Blvd.
Bartlesville, Oklahoma 74003
(918) 337-4134 office
(918) 331-5507 cell
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PAS is a member FINRA, SIPC.

From: Dan Guerette [dguerette@royalaa.com]
Sent: Monday, June 29, 2009 3:52 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25"

I'm writing to voice my opposition to regulatory notice 09-25.
I am a registered rep with 30 years of investment experience. In addition to registered products, we handle individual and group life, disability and medical products.
All of these products are sufficiently overseen and regulated by the Maine Bureau of Insurance.
We do not feel that adding an additional layer of bureaucracy or oversight to these products would serve any useful purpose. It would also make our jobs of serving our clients much more difficult and time consuming.
Dan Guerette

Daniel R. Guerette
Registered Representative
Securities Offered Through Royal Alliance Associates, Inc., Member FINRA & SIPC
328 Harlow St
Bangor, ME 04402-2729
Tel: 207-942-3526 Fax: 207-942-3712
E-mail: dguerette@royalaa.com

From: Policyowner Advisory, Inc. [mailto:pa@poanyc.com]
Sent: Wednesday, June 24, 2009 10:28 AM
To: Comments, Public
Subject: Opposing Exansion of Suitability Obligations to Recommendations that do NOT involve Securities.

To Whom It May Concern:

As a former compliance consultant to the insurance/securities industry (when both sides were under the same umbrella) and a current independent compliance consultant to the consumer of insurance (and securities products sold in insurance products wrappers) and work with your offices and Departments of Insurance quite regularly, please note the following:
Simply put, your side is unqualified to oversee and most important to this commentary, blind to the inefficiencies of the registered reps selling of insurance products and securities sold in insurance wrappers (variable) by broker-dealers. At this moment in time you would be ineffective and quite possibly, a hazard in your role of protecting a consumer and the reputation of your industry as well.
All the regulations in the universe will remain ineffective until such time that there is STRICT ENFORCEMENT! No exceptions! Wouldn't you agree that consumers have been harmed beyond what is 'morally' acceptable; lives, hopes and dreams destroyed and no retirement for many hard working Americans. All "Joe and Jill Public" did is take the direction of the finest and most respected financial minds and institutions ... and trusted. We owe them. It is not about us. Stay on your side of the house, become an expert to the securities side (not the insurance side), and restore the reputation of your industry.
Thank you.

Carol Guerieri
Policyowner Advisory, Inc.
100 Park Avenue, 20th Floor
New York, New York 10017
212.286.4141 (direct)
212.286.4242 (fax)
pa@poanyc.com

-----Original Message-----
From: mark.gurley@nmfn.com [mailto:mark.gurley@nmfn.com]
Sent: Friday, June 26, 2009 9:51 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Mark Gurley
85 Campau NW
Grand Rapids, MI 49503

June 26, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Plain and simple we have too much regulatroy paperwork already. There is five times as much paperwork than 10 years ago and clinets are signing government forms that they do not understand anyway. We need less government not more.

Sincerely,

Mark Gurley, CLU, ChFC
6164510783

From: Kurt Haibach [mailto:kurt.haibach@tssimail.com]
Sent: Thursday, June 25, 2009 2:25 PM
To: Comments, Public
Subject: regulatory Notice 09-25

Please reconsider this concept that 09-25 proposes. Just the current paperwork alone intimidates prospective buyers of all products that a financial planner, registered representative, and life and annuity insurance agent. Most already state that they have signed more disclosures and forms than when they bought there house. The state of Pennsylvania and their insurance commissioner are diligent about disclosure of all products sold in the state and are out to protect the people of the state. I cannot imagine any other state that does not do or feel that it is their job. Having FINRA add another layer will only add confusion and once again intimidate consumers from purchasing products that they should or need to purchase. Please drop the idea of the non security products off your proposal.

Kurt

Kurt T. Haibach, LUTCF
Gary B. Haibach & Associates
1849 West 8th Street
Erie, PA 16505
Phone: 814-452-6750
Fax:814-456-4848
kurt.haibach@tssimail.com

From: Cecy Haines [chaines@parkaveinvest.com]
Sent: Tuesday, June 23, 2009 10:17 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

This commentary is directed to Marcia E. Asquith, Office of the Corporate Secretary, FINRA.

I have been a licensed insurance agent in the State of Wisconsin since 1985 and a Securities Series 7 and 63 Registered Rep since 1997. It is my opinion that all individuals giving investment advice should be regulated through FINRA and offering that advice through a Broker/Dealer that has oversight and accountability for the suitability of the investment recommendations made to clients. This includes, but is not limited to: securities, life insurance, long term care insurance, variable, fixed and indexed annuities. In addition, the playing field needs to be leveled to include advisory accounts (so called wealth managers) and trust companies. These advisors have flown under the radar for far too long and need to be held accountable to FINRA as well. Perhaps many of the Ponzi Schemes recently brought to light could have been discovered and people's investments/retirements could have been saved.

Thank you.

Cecile A. Haines

Cecy Haines
Investment Representative
Park Avenue Investments
655 Park Ave
P O Box 4
Baraboo, WI 53913
Phone: 608.644.2712
Fax: 608.644.2721
chaines@parkaveinvest.com

NOTE: We can not accept market instructions via email. Please call us at 608.644.2712.

From: Kirk M. Halverson [mailto:kmhalverson@ft.newyorklife.com]
Sent: Thursday, June 25, 2009 1:52 PM
To: Comments, Public
Subject: Finra expansion of regulation

I strongly oppose Finra's expansion of regulatory powers towards non-securities products. This is not necessary!!!! This is a knee jerk reaction that will punish 99 percent of the financial professionals helping the public. We are paying for the sins of a few select dishonest ie: Merrill Lynch, Citi group, Lehman R.I.P. ect. Quit advancing socialism and government intervention/ involvement. Capitalism works, leave it alone!!!!!!!!!

Kirk M. Halverson LUTCF
Financial Services Professional
New York Life Insurance Company Agent
1186 East 4600 South #300
Ogden, Utah 84403
Ph. 801-625-1254: Cell. 801-645-1254

Registered Representative offering securities through NYLIFE Securities LLC (Member NASD/SIPC)
150 West Civic Center Drive Suite 600
Sandy, Utah 84070
Ph. 801-567-7400

From: Hamilton, Stephen [Stephen.Hamilton@axa-advisors.com]
Sent: Tuesday, June 23, 2009 11:22 AM
To: Comments, Public
Subject: Expansion of suitablity rules to non-securities

I oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over products and services which are not securities, and it would be unnecessary and inappropriate for this change to occur.

Steve Hamilton
Legacy Planning Partners, LLC
AXA Advisors, LLC
3030 NW Expressway, Ste. 121
Oklahoma City, OK 73112
Phone: (405) 917-2479
Fax: (405) 946-8690
Stephen.Hamilton@AXA-Advisors.com

LEGACY
planning partners llc

From: Karen Hammond [mailto:karen@hammondagency.com]
Sent: Thursday, June 25, 2009 2:39 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

This e-mail is to advise you that I am strongly OPPOSED to FINRA expanding suitability rules to include recommendations that do not include securities.

I am an insurance professional with almost 30 years of experience, and adding yet another layer of compliance on top of what is already required is simply not necessary. There are fewer and fewer people choosing to come into my profession every year, and it is no accident that as the rules and regulations become more onerous, more people leave the business or choose another career altogether. It is not uncommon for top advisors to choose to work only with the very wealthy, leaving the middle and lower income people with fewer choices. It is a decision I am struggling with right now in my own practice. I don't want to let these folks down, but there are only so many hours in the day. More and more regulation is having unintended consequences and hurting the very people you think that you are helping.

Simply put, there is already enough regulation. All of the vendors we work with have their own rules that we must abide by. Each state we work in has a level of compliance we must abide by.

Don't get me wrong. I think it is intolerable when people in my business take advantage of folks and don't explain products and/or services adequately. But more and more regulatory burdens on the ones doing it right are not going to solve that problem. There are already avenues in place to deal with those people.

Thank you for giving me the opportunity to express my views.

Karen R. Hammond, ChFC

The Hammond Agency, Inc

2841 Hartland Rd. Ste 406

Falls Church, VA 22043

(703) 849-1200

(703) 849-1276 fax

JAMES L. HARDING & ASSOCIATES, INC.
James L. Harding, CLU®, President

July 1, 2009

Marcia Asquith
FINRA – Office of Corp. Sec.
1735 K Street NW
Washington DC 20006-1506

Re: FINRA Regulatory notice 09-25

Dear Ms. Asquith:

I am a licensed insurance professional and a registered representative entering my 53rd year of active service. I am writing this letter because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to included non-securities products and services.

A debate is underway currently on Capitol Hill, in the Administration, the SEC and FINRA, as well as private sector stakeholders regarding the issues concerning the standard of care which broker/dealers and investment advisors owe to their clients. It would be inappropriate for FINRA to expand or revise requirements while this debate is underway since further changes may be made within a matter of months.

For these reasons and others, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views and for your time.

Sincerely,

James L. Harding, CLU

JLH/cp

1 Crown Drive, Suite 105, Kirksville, MO 63501 Phone: 660-665-5885 Fax: 660-665-8188 Toll Free: 800-691-5885

-----Original Message-----
From: njclu@aol.com [mailto:njclu@aol.com]
Sent: Tuesday, June 23, 2009 6:40 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Lorne Hargis
64 Maple Avenue
Maplewood, NJ 07040-2667

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative in many states in addition to my resident state.

Like most of my professional associates I am licensed for and write multiple products to help my clients as we work together to protect their income and strive for their financial security.

I read today about Regulatory Noice 09-25 which expands FINRA's regulatory oversight role to include products that are not defined as securities.
The way this is written leads me to believe that products such as long-term care, disability insurance, permanent life insurance, term life insurance and fixed annuities would be included under this regulation for suitability requirements. I strongly object to this expansion.

I have been in the business since 1976 and have successfully completed courses for the Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC) designations. I am also an active member of the National Association of Insurance and Financial Advisors (NAIFA). When dealing with clients ethics is the cornerstone of all presentations and sales made. Ethics is defined as doing the right thing when nobody is looking. I believe that agents and registered representatives who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions under current regulations.

This proposal would create layers of additional and unnecessary regulatory requirements. And, as stated earlier, FINRA does not have jurisdiction over products

and services which are not securities and its authority should not be expanded to include non-securities products and services.
Under this proposal my broker/dealer would have to determine whether a disability income protection policy is suitable for a client. Is this really what is intended?

All of these aforementioned products, among others, are currently subject to comprehensive regulation by each state's department of insurance which has regulators that are more suited for this task. The application of FINRA rules to these products would most likely result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

It is my understanding that policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as others are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for considering my views on this issue.

Sincerely,

Lorne Hargis
973-762-1689

School of Law
Securities Arbitration Clinic

8000 Utopia Parkway
Queens, NY 11439
Tel (718) 990-6930
Fax (718) 990-6931
www.stjohns.edu

June 25, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Proposed Consolidated FINRA Rules 2090 and 2111 – Know Your Customer and Suitability

Dear Ms. Asquith:

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to comment on the proposed FINRA rule consolidation concerning suitability and know-your-customer obligations, proposed consolidated rules 2090 and 2111, set forth in Regulatory Notice 09-25. The Clinic strongly supports the rule consolidation because we believe that the proposed rules properly place the responsibility of obtaining the information necessary for making an appropriate recommendation on the broker. However, we believe that some ambiguities remain in the language of the rules and that the rules could go further in order to ensure investors are sufficiently protected.

The Securities Arbitration Clinic represents investors, most of whom are of modest means, in the arbitration process against brokers and brokerage firms. In addition to representing aggrieved investors, the Clinic is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing brokers' obligations to gather information about their customers prior to making investment recommendations, and ensuring that investors are sufficiently protected by the process. It is important that the suitability rules reflect that the recommendation process is not a caveat emptor system.

The current NASD Rule 2310 is inadequate for ensuring that a broker has obtained a sufficient amount of customer information in order to make a suitable investment recommendation. Under this rule, a broker must have reasonable grounds to believe that his recommendation is suitable based on any information disclosed to him by the customer. The rule also requires that a broker make reasonable efforts to obtain the customer's financial status, tax status, and investment objective, however, this

information need only be obtained prior to execution of the trade, not prior to the recommendation. It is implied that the broker need only consider the information disclosed by the customer when making a recommendation. Consequently, under this rule, if a customer has not made any disclosures about his financial situation or needs, the broker's recommendation could potentially be based on no information whatsoever, essentially disregarding client-specific suitability. The proposed consolidated rules help to alleviate this inadequacy. The proposed consolidated rules adopt a standard that incorporates NYSE Rule 405 which requires that firms use due diligence to learn the essential facts about each customer. We believe that the proposed consolidated rules properly place the onus on the broker to obtain customer information prior to making a recommendation, rather than allowing the broker to solely rely on information provided by the customer, without any affirmative duty on the broker until the trade is placed. The rules also delineate a comprehensive list of facts that a broker should make a reasonable effort to obtain, which has been absent from previous versions. We believe that this addition will help to ensure that a greater number of consistent criteria are considered by brokers by clarifying what specifically a broker should consider when determining if a recommendation is suitable. This should ultimately result in greater uniformity and less ambiguity about the intent of the rule. The proposed consolidated rule also goes further in that it requires the broker to consider information known by the firm or the broker, regardless of how the firm learned the information. We support these changes to the proposed consolidated rules.

While the Clinic supports the proposed consolidated rules generally, we believe that the proposed language still contains ambiguities that should be clarified in order to provide increased protection to investors. Proposed rule 2111 states "[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer," but the rule never explicitly states what is actually considered a "transaction" or "investment strategy." Presumably, these terms would encompass recommendations regarding the purchase, sale, or exchange of any security, as stated in NASD Rule 2310. However, the terms presumably also include some set of recommendations beyond those stated in Rule 2310 given that alternative language was used, but it is unclear what types of recommendations are actually covered. In order to avoid the possibility that these terms are not interpreted narrowly to merely include recommendations that involve a purchase, sale, or exchange, they should be defined specifically in the supplementary material.

The lack of specific definitions for "transaction" and "investment strategy" is problematic because it opens up a possible loophole whereby a broker could avoid liability under the suitability rule entirely. Under proposed rule 2111, in the absence of explicit definitions, a broker could simply argue that certain recommendations constitute neither a transaction, nor an investment strategy. If this were the case, the broker would never be responsible for unsuitable recommendations because his actions would fall outside the black-letter provisions of the rule. We suggest that the proposed rule state that the term "investment strategy" should be viewed broadly and should include, but not be limited to, recommendations involving the retention of any investment, even if the investment was transferred into the firm. Moreover, there should be an affirmative duty

to review portfolios that are transferred into a firm, as the lack of a recommendation to make any changes to the portfolio effectively constitutes an implicit recommendation to retain what was in the account.

The language in the section on quantitative suitability in the supplementary material is also problematic. A member or associated person is only subject to the suitability obligations pertaining to quantitative suitability when he or she has "actual or de facto control" over the customer's account. We believe that requiring actual or de facto control is extraneous and this language should be removed. If the number of trades being recommended by a broker is unsuitable, it should not matter whether the broker has control over the account. The suitability obligation should lie with the broker simply by virtue of the fact it is the broker making a recommendation. A broker's unqualified obligations to a customer should not be viewed in the vacuum of each individual transaction; the suitability obligation should take into consideration the totality of circumstances. The number of trades a broker recommends should be as suitable as the individual recommendations. This language can be eliminated from the proposed rule without sacrificing any substantive impact the quantitative suitability section may have.

Furthermore, while the Clinic supports the inclusion of a section that requires evaluating quantitative suitability, we feel that there should be additional sections. The proposed quantitative suitability section requires that the combination of recommended investments be viewed as a whole to determine if they are collectively, and not just individually, suitable in number given a customer's profile. Likewise, the concentration that will result from any recommendation should also be evaluated for suitability. By not requiring evaluation of the concentration, it is possible that while a series of recommended investments appear suitable, they may not actually be suitable in their recommended proportions. An account may be over-weighted in a specific investment, a particular type of investment, or in an investment sector. While it may be possible to argue that an evaluation of the concentration of each investment is implicit in the language proposed, we suggest that the requirement be explicitly stated for additional protection and to prevent ambiguity.

The Clinic does not support limiting the scope of the proposed suitability rule to only recommendations involving securities. We believe the suitability rule should be applicable in all instances where an investment professional is making a recommendation of any product, service, or investment strategy. Customers confer with investment professionals for their financial expertise. The advice a customer receives from a broker is generally relied on, and often acted upon, because most customers lack the financial savvy to make these choices on their own, or they believe the broker has greater financial expertise. Due to the high frequency of reliance, it is necessary to provide customers with greater protection when they seek financial advice, regardless of whether securities are involved in the recommendation.

By limiting the suitability obligation to recommendations that involve securities, the rule would be inviting brokers to neglect suitability obligations in the event that the recommendation made did not involve securities, regardless of what advice was sought

by the customer. In today's world, brokers often deal with different types of investments, services and strategies. Adopting a uniform obligation would eliminate the need to evaluate the character of a recommendation, and would permit the focus to be on the substance of the recommendation. Additionally, by extending the suitability obligation to recommendations of any product, service, or investment strategy, brokers would be aware of their obligation at all times, rather than having a different standard depending on the nature of their recommendation. Customers often do not understand that their broker may be subject to different rules depending on the service they are rendering at that particular moment. Customers should be protected in every instance, and the protection offered should be based on who they are dealing with, not what hat that person happens to be wearing when the customer speaks to them. Moreover, by restricting the suitability obligations to only recommendations involving securities, FINRA is essentially providing an endorsement to make unsuitable recommendations in other contexts. Due to the discrepancy of knowledge between the broker and customer, and the level of reliance on the broker due to the broker's presumed superior knowledge or experience, it is necessary to ensure that all recommendations are subject to the same suitability obligations, and not just those involving securities.

As discussed above, we support the proposed consolidated rules as they should help to decrease the number of unsuitable recommendations by clarifying the broker's obligation to obtain information about their customers, and to consider that information when making a recommendation. However, we believe that it would be possible to expand these obligations even further while still remaining consistent with the spirit of the rules, thus ensuring that all recommendations made, regardless of their nature, are appropriate for each individual customer. We ask that FINRA continue to consider additional improvements that could be made to the suitability obligations to increase the protection of public investors. Thank you for your consideration of this important matter.

Respectfully,

Peter J. Harrington
Legal Intern

Christine Lazaro
Supervising Attorney, Securities Arbitration Clinic

Lisa A. Catalano
Director, Securities Arbitration Clinic

From: Harris, Stephen [mailto:stephen.harris2@axa-advisors.com]
Sent: Tuesday, June 23, 2009 12:58 PM
To: Comments, Public
Subject: Ok, guys, enough already!

FINRA can regulate securities. They should.
We have enough regulators already in insurance.
Pretty soon we'll just be complying, but not doing any business.
This is how we lose our position in the world. And the world laughs.
Apparently some people need a job. Might I suggest that they go
create something, rather than regulate everything!

Stephen E. Harris, ChFC,CLU
/ AXA Advisors, LLC
494 Williamsburg Lane
Memphis, TN 38117
Phone: 901-682-0903
Fax: 901-682-0802
E-Mail: stephen.harris2@axa-advisors.com

From: Jim Harter [jimharter@insuranceandplanningsolutions.com]
Sent: Thursday, June 25, 2009 10:54 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to the expanding of FINRA's suitability obligations to recommendations that do not involve securities.

First, let me state I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Also, I believe strongly that insurance and other non-securities products are already subject to comprehensive regulation at the state level. Another layer of rules and regulations will result in conflicting and confusing regulatory requirements and further hinder the ultimate goal which is consumer protection.

Thank you for your consideration on my views.

Jim Harter, CLU, LUTCF
VP Producer Development
Insurance and Planning Solutions
5120 Virginia Way Suite C-11
Brentwood, TN. 37027

615-309-2170 ext. 614
jimharter@insuranceandplanningsolutions.com

www.InsuranceAndPlanningSolutions.com

Dear Ms. Marcia E. Asquith,
I write to have the proposed regulations of fixed products i.e., life insurance and annuities,etal be left as is. As a long time (39 years) life/annuity professional, I have always maintained high standards to see that any recommended products have adequate suitability for the clients needs. We do not need any more oversight regs to do our jobs properly. Someone is only adding paperwork that will cause fees etc. to be added to producers of the above products. So far it isn't broke, so don't fix it with another layer of controls. The companies I write for have sufficient requirements. We don't need more. Sincerely, S. Robert Hartman

charles SCHWAB

Compliance
101 Montgomery Street San Francisco CA 94104
(415) 636 7000

BY EMAIL TO: pubcom@finra.org

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

RE: FINRA Regulatory Notice 09-25
Suitability and "Know Your Customer"

Dear Ms. Asquith:

Charles Schwab & Co., Inc. ("Schwab") appreciates the opportunity to comment on proposed consolidated FINRA rules governing suitability and know-your-customer (KYC) obligations. Schwab supports the issuance of a strong suitability rule that clearly articulates broker-dealer obligations when making investment recommendations to its customers. Schwab believes the suitability rule provides fundamental protections for the investing public, and appropriately serves as a foundation for effective investor protection. At the same time, certain aspects of the proposed rules create practical challenges that warrant consideration of modifications.

Proposed Rule 2111

Proposed Rule 2111 would establish that a member or associated person have "a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer." We agree with FINRA that the suitability rule only applies when the member firm or associated person makes a recommendation – an unsolicited order to buy or sell a security does not trigger a suitability obligation. We also agree that if the purchase or sale of a security is recommended as part of an overall recommended investment strategy, the investment strategy must also be suitable for the customer. However, it is unclear as to what constitutes an "investment strategy involving a security or securities," and the proposed rule could be read broadly to cover recommendations that do not result in trades. We believe that FINRA should clarify the rule by stating that suitability should apply to recommendation of strategies resulting in the purchase, sale or exchange of a security or securities.

FINRA has requested comments as to whether or not the suitability rule should be expanded to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities. Such an expansion would extend the FINRA suitability rule to a variety of non-securities products and services, such as life insurance, futures, debit cards and banking products, that are currently subject to the customer protection rules and regulations of other federal and state regulatory bodies. Additional substantive customer protection regulation and oversight may arise as a result of proposed federal regulatory reforms designed to enhance consumer financial protection.[1] The blanket application of FINRA suitability requirements to the sale of these products and services may create duplicative, confusing or conflicting sales practice requirements without any benefit to the investor. We believe FINRA should refrain from overlaying securities suitability requirements on non-securities products, particularly in light of possible substantive regulatory changes impacting the sales of these products.

Proposed Rule 2111 expands the categories of customer information that a member must make reasonable efforts to obtain prior to making a recommendation. In addition to information about the customer's financial status, tax status and investment objectives, the new rule would require the member to seek to obtain information concerning the customer's age, other investments, investment time horizon, liquidity needs and risk tolerance. Schwab agrees that this information is relevant in many situations where a recommendation is made; however, there are instances where a customer is seeking very limited advice with very specific criteria regarding the security that he or she would like to purchase. In those circumstances, obtaining customer information in each of the articulated categories may not be warranted. FINRA should consider building flexibility into the rule and not mandating that the member seek to obtain these new categories of information for every recommended transaction. Members should have discretion to determine what customer information is relevant to the suitability determination associated with each recommended transaction. If FINRA takes the position that this information is required to be obtained and captured, FINRA should recognize that there are substantial costs associated with developing, modifying, and implementing forms and systems to request and capture the proposed new categories of information and for firms to evaluate changes to procedures, policies and training to incorporate the newly articulated requirements. FINRA should evaluate these costs and establish an effective date to allow firms a reasonable amount of time in which to meet the new requirements.

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[1] On June 17, 2009, the United States Department of the Treasury proposed a number of regulatory reforms designed to protect customers and investors from financial abuse. The proposed reforms, which are set forth in a white paper entitled "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation," include a proposal to create a new federal agency with broad jurisdiction to protect consumers of financial products.

One of the new categories of information required to be collected is information about other investments. Most customers hold a variety of assets outside of their broker-dealer, which may include real estate, personal property, commodities, retirement accounts, life insurance contracts and private placements. In many instances, it is not necessary to collect, and many customer are not willing to provide, such detailed financial information when an investment recommendation is made. The circumstances of the interaction and the needs and preferences of the customer should govern the extent to which information concerning outside investments is disclosed and considered. "Other investments" should not be a mandated category of information required for a recommendation.

The suitability provisions of the proposed rule also state the recommendation must be based on "the facts known by the member or the associated person or disclosed by the customer . . . ." This provision can be read to attribute to the representative recommending the trade knowledge of every fact collected by the firm regarding the customer. This broad attribution of knowledge to the recommending representative raises practical and fairness issues, particularly for associated persons in firms with multiple business lines. Customers may provide information for a variety of different purposes (for example banking, insurance or securities transactions) to different employees working in different departments and recording the information on separate systems. A registered representative working with a client and making securities recommendations may not have access to all of that information, some of which may be subject to appropriate internal information barriers. It is sufficient for the rule to require that the representative collect information reasonably required to make a suitable recommendation without attributing to the representative every piece of factual information collected by the firm. This aspect of the rule should be deleted.

Proposed Rule 2090

FINRA has proposed a new and expanded "Know Your Customer" Rule 2090 that requires firms to use "due diligence in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer." The supplementary material states that for purposes of this Rule, the facts "essential" to "knowing the customer" include the customer's financial profile and investment objectives or policy. Schwab believes the expansive scope of the proposed rule to include the collection of customer financial profile and investment objective information unnecessarily confuses the KYC rule with the suitability rule, is unwarranted and creates the potential for expanding member firm suitability obligations to transactions that are not recommended by the member firm or its registered representatives.

In Regulatory Notice 09-25, FINRA states that the source of proposed Rule 2090 is NYSE Rule 405, and that the know your customer concept is embedded in the just and

equitable principles of trade of NASD Rule 2110, citing Exchange Act Release No. 44178 n.7. [2] The cited Exchange Act Release states in relevant part:

> Members should nonetheless remember that, under NASD Rule 2110, they are required to comply with know-your-customer obligations. Pursuant to these obligations, members must make reasonable efforts to obtain certain basic financial information from customers *so that members can protect themselves and the integrity of the securities markets from customers who do not have the financial means to pay for transactions* [emphasis added]. . . . Unlike the suitability rule, the NASD's know your customer requirements apply to members regardless of whether they have made a "recommendation."

In Regulatory Notice 09-25, FINRA states that the KYC rule has a much broader purpose than that of protecting the member firm and financial markets from customers who do not have the financial ability to pay for transactions. Without explanation, FINRA states that the data collected pursuant to the KYC rule is used to aid the firm in **all** aspects of the customer/broker relationship, including, among other things, determining whether to approve the account, where to assign the account, whether to extend margin and the extent thereof, and whether the customer has the financial ability to pay for the transactions. This expansion of the purpose of the rule is not consistent with the cited Exchange Act Release and confuses the KYC rule with suitability requirements. While the statement of a broader purpose for the KYC rule may serve to provide a justification for requiring firms to collect financial profile and investment objective information for all customers, there is no need to collect this information if the purpose of the rule, consistent with cited precedent, is to protect members and the integrity of the securities markets from customers who do not have the financial means to pay for transactions.

The collection of financial profile and investment objective information under the expanded KYC rule is potentially problematic where a customer's trading activity is self directed or directed by an independent investment adviser. The record of this KYC data may create uncertainty as to a member firm's obligations where a customer enters unsolicited trades (or a third party adviser is directing trades in the customer's account) that appear to be inconsistent with the customer's investment objective and financial profile information collected under the proposed KYC rule. It is possible that regulators or private litigants could seek to hold member firms accountable for permitting unsolicited customer trading activity that is inconsistent with the KYC suitability information that is on record at the firm. To protect against that possible exposure, members might need to keep KYC information up to date, monitor unsolicited trading activity against the recorded KYC information and consider blocking or cancelling unsolicited trading activity that is inconsistent the KYC customer information provided. The practical implications and risks associated with the collection of suitability

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[2] Exchange Act Release No. 44178 (April 12, 2001), 66 FR 20697, 20698 n. 7 (April 24, 2001)..

information under the proposed KYC rule are significant and the benefits of gathering the information are unclear. The Supplementary Material under proposed Rule 2090 should be deleted.

Schwab appreciates the opportunity to provide comments and thanks FINRA for its consideration of the points we have raised in this letter. Please feel free to contact me at (415) 637-0866 to discuss them in more detail.

Sincerely,

Bari Havlik
SVP and Chief Compliance Officer
Charles Schwab & Co., Inc.

From: EHDONALD@aol.com [mailto:EHDONALD@aol.com]
Sent: Tuesday, June 23, 2009 11:36 AM
To: Comments, Public
Cc: dhedrick@securitiesmail.com
Subject: Expanded Regulation

To Whom it may concern:

Having been in the financial business for 50 years come August 18th, I want you to know that I do not believe we need expanded regulation. Those of us who have for years served clients with their interests at heart have been burdened down by regulations. At some point we must come to realize that regulation does not stop those who are going to cheat. If someone is going to do something unsavory they will find a way to do it, as is proven daily by the various reports in the news media.

At the moment that I am sending this, I am dealing with a horrendous amount of emails and compliance communications that I have to read and keep up with that is caused by some who have done wrong and that are sent out to protect the sender from being accused of violations of compliance regulations; just so the sender can prove that they made us aware of the rules. Enough is enough! If auto sales had been regulated a fraction as much as the financial business those companies would have been gone years ago, yet that business affects many more people; people really do need protection from unsavory practices. More sophisticated people should need less protection.

As I said before, I have been doing this for 50 years, insurance and investments, and have never had a complaint. You should be able to see why I am against more regulations. I already do the right thing, and if it were not for the additional burden of having to keep up with compliance I could do a lot more of the right things. I say a more strenuous policy of going after those who do the wrong things would have a better affect than punishing everyone for the wrongdoing of a few, by all the time and trouble it costs the rest of us.

Thanks,
Donald E. Hedrick, CLU, ChFC

-----Original Message-----
From: jeff.heileson@nmfn.com [mailto:jeff.heileson@nmfn.com]
Sent: Thursday, June 25, 2009 6:16 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Jeffery Heileson
1306 N. Linwood Ave
Santa Ana, CA 92701-2719

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am an insurance agent and registered representative. I object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

People who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products will result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Jeffery W. Heileson, CLU, ChFC
714-834-1005

From: Henderson, David [mailto:David.Henderson@pacificlife.com]
Sent: Tuesday, June 23, 2009 10:06 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

Marcia E. Asquith,

I would like to comment on the above referenced proposed regulation to expand the regulatory scope of FINRA to include products that are not securities. I am a licensed insurance agent and registered representative and am strongly in support of vigorous punishment of any rogue rep who violates existing laws but I am also very much opposed to FINRA taking the opportunity of the current financial downturn and political climate to propose a power grab. I believe this is completely driven by the very greed your organization is supposed to protect consumers from. FINRA member broker dealers do not get overrides on non-securities products and that is the true reason for this proposal. The more products you oversee the more revenue your member firms generate. I am amazed at the transparent attempt to control independent brokers through this proposal. Please drop this silly regulation and just worry about effectively managing what you currently oversee.

Thank you for your time.

Dave Henderson, CFP, CLU, ChFC
Field Vice-President
Rocky Mountain Region - CO, UT, WY
5445 DTC Parkway, Suite 1030
Greenwood Village, CO 80111
303-680-9940 or 888-680-9940
david.henderson@pacificlife.com

From: Henks, Rick [mailto:Rick.Henks@lfg.com]
Sent: Tuesday, June 23, 2009 11:03 AM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25
Importance: High

June 23, 2009

To whom it may concern,

As a licensed insurance professional and registered representative, I would like to weigh in on the issue of FINRA Regulatory Notice 09-25 concerning the expansion of FINRA's suitability obligations to recommendations that do not involve securities.

Having been in the financial planning profession for over 33 years, I have seen instances where some parties have given misleading information and made unsuitable recommendations. It is very offensive to those of us who have dedicated ourselves to do what is right for the client. Clearly, those individuals and/or firms should be dealt with in accordance with the remedies currently provided.

What greatly concerns me about the proposal is that FINRA is seeking to expand its control over products and services which are not securities. Other regulatory bodies have the authority and ability to regulate non-securities products and services. To allow FINRA this authority would be taking them beyond the boundaries of their expertise and resources.

As just mentioned, other regulatory bodies have the authority and ability to address these non-securities products and activities. As a specific example, for nearly 1/3 of a century I have been involved in helping consumers obtain and maintain adequate life insurance and related products. These products have been, for the most part, well regulated by the individual states. Even now, there is consideration of a national insurance regulatory body. That possibility alone creates confusion and will very likely create conflict that will impact the well-being of the public. Allowing FINRA to be involved in these types of products and services will create even greater confusion, and, in my opinion, create a "power struggle" that few, if any, will gain from.

As you well know, there is debate currently in process about the "standard of care" which broker/dealers and investment advisors owe to their clients. In light of this issue currently being studied and with decisions still being made, it would be unwise and inappropriate to allow FINRA an expanded role in non-securities products and services.

By far and away, the vast majority of investment advisors, insurance professionals, financial planners, and those in this segment of the financial services industry seek to do what is in the best interests of their clients and customers. There always has been and, unfortunately, always will be some who feel they can "short-cut" the system. These individuals should be dealt with in accordance to the rules and regulations that already exist. However, the expansion of power to regulate non-securities products and services to a securities-governing body is not only unwise, but unnecessary.

I urge you not to allow the expansion of FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for your time and consideration of my views and opinions on this matter.

Rick Henks, CFP, CRPC, CLU, ChFC, LUTCF
Henks Financial Group
4971 N.E. Goodview Circle, Suite A
Lee's Summit, MO 64064-2492
Office: 816-478-0012 Fax: 816-478-2202
E-mail: rick.henks@lfg.com

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From: Thomas H Herlong [mailto:therlong@eaglestrategies.com]
Sent: Friday, June 26, 2009 10:41 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

I would like to express my opposition to the proposed FINRA suitability rules. As an agent and registered representative affiliated with New York Life, we are already held to very high compliance regulations and the amount of work that honest persons have to comply with is added each time a small minority breach the trust and suitability of their clients. These are the persons that need to be dealt with.

Products that do not involve securities are already subject to regulatory requirements by the insurance companies and state regulators. It would be inappropriate for FINRA to expand or revise current suitability requirements while the current debate of similar issues is underway in Congress, since further broader-scale changes may be made within a matter of months.

Thank you,
Thomas H Herlong

Thomas H. Herlong, CLU, ChFC
Financial Adviser*
The Herlong Financial Group
424 Calhoun Street, Johnston, SC 29832
(B) 803-275-5090 (Fax) 803-275-2714
therlong@eaglestrategies.com
www.thomasherlong.com

From: Geoffrey Herring [mailto:gherring@insuringyourmoney.com]
Sent: Thursday, June 25, 2009 12:31 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Insured Financial Solutions, LLC
Authorized Representative Tarkenton Financial, LLC
1535 W. Northfield Blvd., Ste. 12
Murfreesboro, TN 37129
Office: 615-869-0490
Toll Free: 866-585-2460
Fax: 615-869-0495

June 26, 2009

Dear FINRA Representatives:

Today is yet another day that regulatory oversight of non-securities products is forefront to those in the insurance industry who must continue to address concerns over the correct type of regulatory oversight versus excessive oversight. There is much going on in the debate over what should be regulated and by whom.

As such, I find myself questioning whether Regulatory Notice 09-25 should be consuming the time of so many on both sides of the equation when similar matters are currently being contested in court (e.g., 151 matters at hand).

Please let it be known that I, as a licensed insurance professional, strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. As my colleagues, insurance professionals, registered representatives, advisors, etc., should all agree, people who do their job correctly and promote suitable solutions for their clients should be allowed to do so in the current and very appropriately regulated environments for such suitability. Those who chose to avoid suitability guidelines, promote unsuitable sales and/or engage in misleading sales practices should be aggressively prosecuted!

That said, FINRA does not currently have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. I submit to you that FINRA's authority should not be expanded to include non-securities products and services.

As stated earlier, and to emphasize this more clearly, FINRA's consideration of expansive rules

and regulatory authority is currently being debated on Capitol Hill, by the SEC as well as FINRA, and policymakers within the Administration. As such, I feel strongly that it would be inappropriate to make any judicious changes while this debate is ongoing.

I thank you for your time, for all that you do to make this industry, and these industries, more responsive to the true needs of the client, and hope that you will consider my thoughts and suggestions in the professional manner in which they are intended.

Make this your Greatest Day!

Geoffrey Herring, MA, BSN, CLTC
President, Insured Financial Solutions, LLC
Authorized Representative, **Tarkenton** Financial, LLC
12 Lincoln Square
1535 W. Northfield Blvd.
Murfreesboro, TN 37129
Direct 615-869-0490 ext. 15
Toll Free 866-585-2460 ext. 15

Protecting Your Family, Income, Assets, and Choices
Associate, Long Term Care Financial Partners, LLP
Member, National Association of Insurance and Financial Advisors
Member, Corporation for Long Term Care

"Twenty years from now you will be more disappointed by the things you didn't do than by the ones you did, so throw off the bowlines---sail away from safe harbour. Catch the trade winds in your sails! Explore; dream; discover!"
-- MARK TWAIN

From: nancy Hertwig [mailto:nhertwig@ft.newyorklife.com]
Sent: Thursday, June 25, 2009 2:49 PM
To: Comments, Public
Subject: FINRA's Proposed Expansion of Suitability Obligations for Non-Securities Related Products

I want to register my opposition to FINRA's proposal to expand their authority in regards to non-securities related products. This should NOT be an area in which FINRA becomes involved. The non-securities products you propose to scrutinize are already subject to comprehensive regulations by state regulators. Rules FINRA develops could conflict with regulatory requirements. There is already much debate between policymakers on Capital Hill, the SEC, and private stakeholders regarding standards of care owed to clients. It is inappropriate for FINRA to expand or revise current suitability requirements while a debate is underway since it is likely broad-scale changes will be made in the near future.

Nancy P. Hertwig
Financial Service Professional
Agent, New York Life Insurance Company
Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC)
625 S. Gay Street, Suite 400
Knoxville, TN 37902
865-523-0741 Office
865-522-3438 Fax

From: david.hill@sgc-financial.com [mailto:david.hill@sgc-financial.com]
Sent: Tuesday, June 23, 2009 10:05 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

David Hill
707 Commons Drive Ste. 101C
Sacramento, CA 95825-6664

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Please, please, reconsider the value of one more encumbering rule, whose intention for regulating morality and ethics, is already well covered by existing FINRA, Insurance, and SEC regulations. The gauntlet of regulation is already obnoxious. Look, we set the rules, and yet nincompoops will still find a way a way to run their scams. More rules, more headache for us who are in business to make a difference for our
clients.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

David R. Hill

From: wayne@financialdesignsinc.com [mailto:wayne@financialdesignsinc.com]
Sent: Tuesday, June 23, 2009 10:20 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Wayne Hillman
10003 Ballentiune
Overland Park, KS 66214-2345

June 23, 2009

FINRA - Financial Industry Regulatory Authority:

I believe in regulation of those in my profession, especially those that are marginalizing the rest of us. HOWEVER, there is sufficient regulatory authority and oversight on the books already to address the suitability of non-security transactions such as fixed annuities.

DO NOT OVERREACT TO THIS CYCLE OF NEW PRODUCT DEVELOPMENTS, FIXED INDEXED ANNUITIES, THAT HAVE RAISED AN ISSUE THAT WAS NEW TO ALL REGULATORS AND REQUIRED SOME TIME TO DEVELOP RESPONSES.

The states have sufficient oversight authority and they, along with the manufacturers of such products, are reacting significantly to increase oversight of those few of my peers that are on the edge in their recommendations. FINRA, if becoming involved in the regulation of non-security products will be beyond the realm of its intended reason for existence and providing an unnecessary redundancy in the system.

Such broad language that is contained in this proposal makes it appear that this is just another big agency on a power hungry feeding frenzy.

PLEASE DO NOT GO FORWARD WITH THE BROAD LANGUAGE CURRENTLY IN THIS REGULATION.

Thank you for considering my comments.

Sincerely,

Wayne Hillman
913-207-5507

NSCP

NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS INC.

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington D.C. 20006-1500

RE: Regulatory Notice 09-25 Suitability and "Know Your Customer"

Dear Ms. Asquith,

This letter is submitted on behalf of the National Society of Compliance Professionals Inc. ("NSCP")[1] in response to the Financial Industry Regulatory Authority's ("FINRA") solicitation of comments with respect to proposed consolidated FINRA rules governing suitability and know-your-customer obligations.[2] The purpose of this letter is to inform FINRA of NSCP's concerns regarding the proposed consolidated rules as currently written.

1. Fiduciary or Universal Care Standard

Before turning to our specific comments, we would like to begin with a general observation. Considerable support has been voiced by the public, by members of Congress, and by senior regulatory and self-regulatory officials for the adoption of a "fiduciary" standard or "universal standard of care" that would apply consistent standards of conduct regardless of whether a securities professional functioned in a broker-dealer or investment adviser capacity. This initiative would appear to have the potential for overlapping with, and possibly supplanting, the current and proposed suitability and "know your customer" rule obligations for many broker/customer relationships. The adoption of such a "fiduciary" standard would not appear to require any changes in legislation to proceed and, given the broad support for it, could be the subject of rulemaking in the very near term. Changes in customer care standards impose operational, documentation, educational and compliance costs on member firms and, depending on the details of the rules and the method of implementation, can also give rise to significant systems and programming burdens. The adoption of changes to the current suitability and "know your customer rules," only to be followed by adoption of a new fiduciary standard, could double these burdens; indeed, the need to implement

two sets of changes could actually delay implementation of the eventual fiduciary standards. Under these circumstances, NSCP questions whether it might not be preferable to defer any action on integrating the NASD suitability and NYSE "know your customer" rules in the consolidated FINRA rulebook until a determination is made on how a fiduciary or universal care standard is implemented, so that a single, integrated change to customer care standards can be adopted at one time.

That said, we applaud FINRA's continued efforts to make its rules more workable for all member firms, and as part of this effort, we would like to suggest certain ways in which the proposed rule amendments pursuant to Regulatory Notice 09-25 could be improved.

1. Definitional Issues and New Legal Standards

a. Investment Strategy

FINRA proposes to expand member firms' suitability obligations to cover both recommended transactions and investment strategies involving a security or securities. We believe that including investment strategies under proposed Rule 2111 raises several issues for both FINRA member firms and FINRA examiners.

Applying Rule 2111 to an "investment strategy" risks inconsistent application of the expanded rule among member firms. The proposed rule does not define the word "strategy" and, in the absence of a definition that all member firms understand, it is highly unlikely that every firm will define the word in the same way. For compliance purposes, all member firms that make recommendations or permit their associated persons to make recommendations will have to engage in protracted analyses to establish which series of transactions qualify as an "investment strategy." This kind of analysis will have to be constantly "re-done" as the markets go through different economic cycles and customer needs, and investment ideas change in response thereto. With each member firm engaging in its own self-analysis, investors are likely to have different experiences from firm to firm. For example, Firm "A" may decide that all asset allocation programs are "strategies." Firm "B," however, may determine that plain vanilla types of asset allocation are investment goals, not strategies. Firm B may further decide that asset allocation is only a "strategy" when the customer commits to periodic re-balancing. Dollar cost averaging and "buy and hold" are further examples of investment techniques that, although common in the industry, may or may not be determined by a particular firm to be a "strategy" under the proposed rule. In addition to varying interpretations among member firms of what constitutes a "strategy," the label is subject to being used retroactively by a customer who is displeased with the results of his or her own non-recommended "strategy." A further complication is that the rule does not purport to link the suitability obligation to a *transaction* in securities.

We believe it is likely that the absence of a definition for the word "strategy" will also pose problems for FINRA examiners, and will lead to inconsistent exam results. If Firm A does not define "strategy" in the same manner as Firm B, how will FINRA examiners make decisions

regarding which firm correctly defined the term? How will disciplinary decisions be made? Most importantly, what benefit will investors realize from the expanded scope of the rule in the absence of any industry wide agreement regarding how the rule is to be applied?

We believe that if Rule 2111 is to be expanded in the manner proposed, FINRA should revise the proposal to define the operative term or provide member firms with clear guidance regarding how member firms should define the term "strategy." FINRA should also categorically state that "investment strategy" is not a label that can be applied after-the-fact by any of the parties, but rather must be defined and agreed to by the customer and the member firm before the first securities transaction in the strategy is undertaken. We believe these changes would result in a workable rule and would accomplish several key objectives: namely, consistent examinations and enforcement of the rule; clear compliance and supervisory policies and procedures; and consistent investor experiences across all member firms.

Finally, we also believe that FINRA should recognize that where strategies are used, many member firms will be dependent upon manual forms of surveillance and recordkeeping in order to identify the separate components of the strategy. In other words, firms can and should be expected to document the customer's consent to the strategy and to the transaction that must be present in order for the suitability obligation to attach, but all firms are unlikely to have the electronic capability to "tag" every component of a "strategy" for surveillance and other purposes. FINRA must recognize that compliance with proposed Rule 2111 will require in many cases a significant reliance on manual documentation.

b. Institutional Customer Exemption – a New Legal Standard

NSCP appreciates FINRA's simplification of the factors considered when exempting customer-specific suitability obligations for institutional customers.[3] We are concerned, however, that the first factor fundamentally changes the way the exemption has operated since its inception. The first factor requires "the institutional customer [to] affirmatively indicate[] that it is willing to forego the protection of the customer-specific obligation of the suitability rule."[4] To our knowledge, this affirmative representation would be a brand new requirement, and we believe it would likely prove unworkable in application because institutional investors (at least many of them) lack the statutory or contractual authority to give an open-ended "pass" to liability on the part of the member firm. Thus, this particular requirement of the rule is likely to decrease the ability of institutional investors to deal on an arms-length basis with member firms, as they do today. We question whether that result is beneficial for institutional investors.

c. Institutional Account

FINRA proposes to tie together the definition of an "institutional customer" with "institutional account" as defined in NASD Rule 3110(c)(4).[5] Rule 3110 defines an "institutional account" as one having at least $50 million in assets. Institutional customer interpretative material ("IM") to current Rule 2310 defines an "institutional account" as one

having $10 million in assets. NSCP respectfully requests a unified definition of "institutional customer" across the FINRA rules. Where an entity is labeled an institutional customer for one purpose, it should be so defined for all. NSCP supports a threshold amount of $10 million in assets as this is consistent with the current institutional suitability rule and we are unaware of any problems with the current rule. If a compromise is called for, NSCP would support a threshold amount of $25 million in assets, which would mirror the minimum amount of assets under management for SEC-registered investment advisers.

d. Information Gathering Requirements

Proposed FINRA Rule 2111 heightens the amount of information firms must gather to meet their suitability obligations. In determining whether a recommendation is suitable for a particular client, firms are currently required to analyze customer-disclosed information. Under the new rule, firms would have to take into consideration information about the customer "known by the member [firm] or associated person."[6] There is tremendous vagueness around the word "known" in this context. For example, if a registered representative learns of his client's illness from a third party at a neighborhood block party, what is the representative's obligation? Is it a breach of privacy for the representative to call the client and ask about the illness? We suggest that the "known" concept is unworkable and should be stricken from the rule.

e. Know Your Customer

FINRA proposes a know-your-customer obligation under proposed FINRA Rule 2090 that would encapsulate the due diligence standard promulgated by existing NYSE Rule 405(1).[7] While NSCP supports such a standard, we believe that it must be a very clear standard in order for compliance officers and staff to determine exactly what information must be collected from a customer in circumstances where no recommendation will be made. As proposed, the rule would require firms to use reasonable efforts to collect the customer's "financial profile" and "investment objectives or policy." "Financial profile" is not defined. Moreover, it is unclear why these particular items are needed to open an account for a customer that will direct his or her own trading. If a member firm collects this information, what is its required use? These questions are particularly pertinent because a broadening of the information collection obligation will necessitate that all forms of data collection currently in use by member firms be re-done. As these efforts are not without cost, we believe that a good case must be made regarding why these items need to be collected.

As an alternative, we would suggest that firms be permitted to form a reasonable judgment in determining what information to collect from prospective customers, in light of each firm's business model, services provided, and existing regulatory and legal requirements, *e.g.*, the anti-money laundering rules. This would be in keeping with SEC rules, principally Rule 17a-3, which as you know imposes different recordkeeping requirements on accounts for which a suitability determination has been made.

Finally, we would like to suggest that the due diligence standard be added to proposed Rule 2111, rather than adopted as a separate rule (proposed Rule 2090). FINRA rightly points out that the due diligence "obligation arises at the beginning of the customer/broker relationship and does not depend on whether a recommendation has been made."[8] FINRA also notes that similar due diligence requirements are housed under current FINRA Rule 2010.[9] Including the due diligence standard within Rule 2111 is an appropriate and simplified alternative to adding a separate rule. In the interest of brevity and clarity, efforts should be made to combine in a single rule firms' information collection responsibilities.

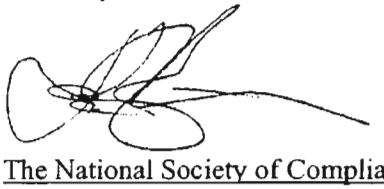
2. Expansion of FINRA Jurisdiction

FINRA requests comment on whether suitability obligations should extend to all recommendations of investment products, services and strategies, regardless of whether they involve securities. NSCP respectfully rejects this regulatory extension inasmuch as non-security based products are outside FINRA's jurisdiction. We also note that apart from jurisdictional issues, regulators of non-securities products and services have developed significant expertise and infrastructure with respect to these products and services. Having multiple regulators expend their resources in furtherance of the same goal, investor protection, would create material redundancies. In the current environment, where all resources must be marshaled in the most efficient and efficacious manner, this kind of redundancy should be avoided.

* * *

NSCP appreciates the opportunity to provide comments on FINRA's proposed consolidated rules governing suitability and know-your-customer obligations and hopes you find the comments useful. NSCP would be pleased to assist FINRA in any way that it can going forward. Please feel free to contact the undersigned if you have any questions or require further information regarding our comments.

Sincerely,



The National Society of Compliance Professionals, Inc.

Joan Hinchman
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[1]NSCP is a non-profit membership organization made up of over 1700 securities industry professionals committed to developing education initiatives and practical solutions to compliance-related issues.

[2]New FINRA Rule 2111 would replace current NASD Rule 2310. Existing NYSE Rule 405 would be adopted as FINRA Rule 2090.

[3] Where all the factors are present, FINRA provides an exemption from customer-specific suitability requirements for institutional customers. The privilege is already afforded under the current rules and NSCP does not raise issue with the exemption generally. NSCP's concern rests with the proposed language of the first factor.

[4] FINRA Notice 09-25, at 3. The new requirement apparently would eliminate a critical sentence currently found in IM-2310-3. "Where the broker-dealer has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently evaluating investment risk, then a member's obligation to determine that a recommendation is suitable for a particular customer is fulfilled."

[5] This connection will effectively adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). *See* FINRA Notice 09-25 n.8, at 5.

[6] FINRA Notice 09-25, at 3.

[7] NYSE Rule 405(1) requires firms to "[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization."

[8] FINRA Notice 09-25, at 4.

[9] FINRA Rule 2010 states: "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

From: don.hines@thrivent.com
Sent: Tuesday, June 23, 2009 10:28 AM
To: Comments, Public
Subject: Proposed expansion of suitability requirements

Dear FINRA Officials:

As a licensed and registered professional in the financial services profession, I write this to you to express grave concerns I have about proposed expansion of FINRA oversight of suitability to insurance and non-securities-related investments.

Please be assured that I do not, in any way, shape or form, condone unsuitable sales to customers under any circumstance. However, I am aware that FINRA does not have jurisdiction over insurance products or over non-security-related investment products. States do have such jurisdiction, and please be assured that in the state of Florida, those regulations are stringent and becoming increasingly so. I do not see any advantage in the duplication of such regulations which, I believe, will only add to broker-dealer costs and regulatory confusion for all concerned. My position is that FINRA's authority to regulate should remain solely focused on the important job of regulating suitability of sales of securities.

I am further aware of the important discussions and debates going on in Washington at this time over suitability standards and their possible expansion or other modification. This fact would seem to me to make it most inappropriate for FINRA to engage in major expansion or change at this time when prospects would seem to point toward further change or expansion. Such a move would only add to confusion and probable duplication. Neither are effects either FINRA or those of us in the field would welcome.

For these reasons, my hope would be that FINRA continues to regulate securities trading and sales, but that they leave suitability regulation of insurance sales and non-securities investments to others.

I appreciate your attention to this appeal and wish you the best in your continuing regulatory mission.

Sincerely,

Donald E. Hines

Donald E. Hines
Financial Associate
Florida Region
Central Florida Group
Thrivent Financial for Lutherans®

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Office: 407-245-3595
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From: Hines, Howard [mailto:howard.hines@axa-advisors.com]
Sent: Thursday, June 25, 2009 3:10 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Dear FINRA:

I have been a licensed insurance professional since 1972 and a registered representative since about 1975. I am a Chartered Life Underwriter (CLU), and I have earned both a BA and an MA from the University of Cincinnati. I proudly served as President of the Cincinnati Association of Insurance and Financial Advisors in association year '89-90. I am writing to you because I STRONGLY object to the expansion of FINRA's suitability obligations to include recommendations that do not involve securities.

I have earned a sterling reputation in the life insurance and retirement planning industry in Cincinnati, Ohio, and I believe scam artists and fly-by-night policy peddlers should be driven out of business and prosecuted when it's appropriate. But I see no need for FINRA to bring my non-security business under their suitability regulations. Heaven knows agents and registered reps face enough scrutiny from various government regulators already. We do not need and absolutely do not want another set of government or quasi-government bureaucrats laying additional paperwork requirements on us.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Howard D.Hines, CLU
100 TechneCenter Drive
Suite #107
Milford, Ohio 45150
(513) 831-1000 Bus
(513) 324-4455 Cell
(513) 248-4085 Fax

From: Scott Hinman [mailto:hinman_scott@nlvmail.com]
Sent: Tuesday, June 23, 2009 4:19 PM
To: Comments, Public
Subject: Proposed Suitability Requirements for Non-Securities Products

I am writing in regards to the proposed expansion of FINRA's scope of regulation to include non-securities products. My understanding is FINRA is responsible for regulating securities. Therefore, how do you justify stepping in on products which are regulated by other groups such as state insurance departments. This appears to be nothing more than a power grab and is patently unjust to those of us who are licensed insurance prfessionals and registered representatives.

I am the Vice President of NAIFA-VT and FIRMLY believe in our code of ethics and making not only suitable, but appropriate recommendations to all families and businesses that I work with. I am also currently in the process of purchasing a home. Clearly, the ridiculous amount of paperwork required to close on a home didn't keep that industry from a meltdown. Adding more paperwork will not solve suitability issues. It will only cause the consumer to further gloss over the explanations, rights and paperwork that is required to open new accounts and purchase new products. This proposal will have a contrary effect to the desired outcome of increased consumer protection. I believe this unjust expansion of FINRA's authority will be detrimental to the consumers' cause.

Best regards,
Scott M. Hinman

Scott Hinman is a Registered Representative of and securities are offered solely by Equity Services, Inc., Broker-Dealer subsidiary of National Life Insurance Co. 354 Mountain View Drive Suite 200, Colchester, VT 05446, 802-864-6819 Member FINRA & SIPC.

From: Mike Hogan [hoganm@foliofn.com]
Sent: Monday, June 29, 2009 1:35 PM
To: Comments, Public
Cc: Jeff Smith; Steve Wallman; Aaron Gonzales
Subject: FOLIOfn Investments, Inc. Comments on Regulatory Notice 09-25 Suitability and "Know Your Customer"

Attachments: Microsoft Word - Suitability Comment Letter - SENT 6-29-09.pdf

Microsoft Word - Suitability C...

Attached is FOLIOfn Investments, Inc's comment to Regulatory Notice 09-25 Suitability and "Know Your Customer". Thank you. MJH

--

Michael J. Hogan
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8th Floor
McLean, VA 22102
hoganm@folioinvesting.com
T: 703-245-5705 F: 703-880-7319
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FOLIOfn What's Next

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June 26, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Comments on Regulatory Notice 09-25: Suitability and "Know Your Customer"

Dear Ms. Asquith:

FOLIO*fn* Investments, Inc. ("Folio"), a registered self-clearing broker dealer and member of the Financial Industry Regulatory Authority ("FINRA"), submits these comments on FINRA's proposed consolidated rules governing suitability and know-your-customer obligations set forth in Regulatory Notice 09-25 (the "Proposed Rules"). Folio is an online only broker dealer that does not provide advice or recommendations, does not associate any registered sales people with customer accounts, and, although it is authorized to do so, does not currently extend margin credit. Our customer base consists of self-directed individuals (and their common investing vehicles such as trusts), as well as clients of independent, unaffiliated Registered Investment Advisors ("RIA's"). These RIAs use Folio's clearing platform to execute securities trades on behalf of their clients and to custody their clients' investment assets. Folio has been in business since 2000 successfully using this model and operating solely under the predecessor NASD rules.

Folio's comments on FINRA's suitability and know-your-customer rule proposal are set forth below. Section I outlines Folio's general comments on the Proposed Rules. Section II sets forth Folio's comments regarding specific provisions of the Proposed Rules.

I. General Concerns Regarding the Proposed Rules

A. Suitability Requirements and Online Accounts

Folio strongly recommends that FINRA address the Proposed Rules' failure to acknowledge and take into consideration the online brokerage business by incorporating into the Proposed Rules its prior guidance on online suitability.

Since the early 1990s the online self-directed brokerage business has been built as a model in which brokers dealers do not know their customers. Under this

model, investors are given direct access to their accounts online, which allows them to trade and manage their assets without a broker dealer's personnel as intermediary. This business model, the benefits of which FINRA has previously acknowledged in Notice to Members ("NTM") 01-23, is not directly mentioned in the Proposed Rules, but should be re-validated. Millions of investors have enjoyed the ever-expanding access they have to information and markets unencumbered by salespeople or recommendations. The firms that offer an online channel have had no problem determining customer identity, assigning credit limits, and providing tools and content that is not in the nature of a recommendation, in an environment where the broker dealer captures minimal consumer information. Rule 17a-3 adopted by the Securities and Exchange Commission ("SEC") under the Securities and Exchange Act of 1934, as amended ("Exchange Act") already recognizes this fact by not requiring the collection of information for customer accounts where a broker dealer has not made a suitability determination for the account during the prior 36 months. Instead, in this situation, Rule 17a-3 requires only a record of the name and address of the beneficial owner of an account. While the Proposed Rules addressing suitability are triggered by recommendations, given that there is no clear definition of what constitutes a recommendation, we feel it is important that FINRA re-validate that, in the online self-directed arena, neither broker dealers nor their registered associated persons need to know their customer, in a suitability sense, unless they make a direct, tailored recommendation.

To address this issue, FINRA should incorporate into the Proposed Rules its prior guidance regarding online suitability. Specifically, NTM 01-23 issued in April 2001 (Online Suitability) contains dialogue and examples that are very relevant to and should be included in the Proposed Rules. NTM-01-23 provides a good discussion of the context under which presentations become a recommendation and concrete examples of what might be and what would likely not be a "recommendation" in the context of electronic communications. This material is directly relevant not only to online activity but to human interaction as well. We strongly recommend that this material be incorporated into any rule that is finally published and should be broadened to cover human interaction between a broker dealer's registered personnel and its customers.

B. The Use of Investment Analysis Tools

Similar to the above, Folio strongly recommends that FINRA include in the Proposed Rules provisions that address the applicability of a broker dealer's suitability obligations to its use of investment analysis tools. Online self-directed investors self select what information they want and decide how to use it with little, if any, input from their brokerage firms. Firms may provide tools and content for use by consumers, but those tools do not generally "recommend" securities transactions or strategies tailored to specific individuals at an identified investment moment in time. The tools do help consumers winnow down the vast

universe of investment possibilities to smaller groupings of investment choices, which an investor can research or further "watch" until such time that the investor decides to make (or end) an investment. FINRA has previously addressed, in NTM 01-23 and IM-2210-6 (Requirements for the Use of Investment Analysis Tools), the use of these tools, including how the suitability rules apply to their use. FINRA carefully crafted NTM 01-23 and IM-2210-6 to acknowledge the unique and still developing online delivery of financial services, including the use of investment analysis tools, and online brokerage firms have tailored their businesses to comply with this guidance. The Proposed Rules should, therefore, be revised to include provisions that address the applicability of the Proposed Rules to the use of investment analysis tools. These provisions should be consistent with NTM 01-23 and IM-2210-6

C. Focus of the Suitability Rule

We strongly recommend that any rules adopted specify their purpose and stick to addressing that purpose. For example, the predecessor NYSE know-your-customer rule was designed to protect broker dealers from investors with bad credit. The predecessor NASD suitability rule was designed to protect customers from recommendations that were not suitable for them. The Proposed Rules go beyond these purposes and should be revised to remain consistent with the protection of customers against unsuitable recommendations.

In the context of knowing your customer's identity and making a credit determination, the only data needed is an investor's name, address, and tax identification number. The commercial databases firms use today can provide a full identification and a very robust credit profile on any adult U.S. citizen using only those three criteria. None of the new data elements suggested in the Proposed Rules such as "customer financial profile", "investment objectives or policy", "investment experience", "investment time horizon", "liquidity needs", or "risk tolerance" are of any value to an identity or credit analysis. While firms may decide to acquire other financial information from a customer for credit determination purposes, the specific information called for should be left to each firm's judgment. Because basic account information collection is already required by FINRA Rule 3110, neither the concept of identification nor the concept of credit qualification should be addressed in the Proposed Rules. Between Rule 3110 and the anti-money laundering and anti-terrorism obligations firms are required to meet, sufficient regulatory attention is already paid to these two concepts and should not be repeated in this rule.

In the context of suitability, if the Propose Rules regarding suitability remain focused on recommended trades or strategies, the specific data elements that broker dealers collect to meet the underlying purpose of the rule, making sure that a recommendation is suitable for a particular customer, should be left to the firms as detailed below. The information required by SEC Rule 17a-3 will drive

the minimum data collection level. Firms will adopt different approaches to data capture and analysis based on what they are offering and their unique approach to customer profiling. This will allow for differences in the marketplace, but those differences will permit the healthy development of approaches and methods of profiling existing and potential customers.

D. The Scope of the Suitability and Know-Your-Customer Rules

Folio believes that the Proposed Rules should not be, and is strongly opposed to them becoming, the vehicle that drives conversion of the commission broker dealer business model to a model that requires a full financial plan for a customer or prospective customer before a broker dealer may make a recommendation. As proposed, the Proposed Rules would expand the scope of the suitability and know-your-customer rules to the point that it would have this affect on broker dealers' businesses. While different business models, typically financial planning, portfolio management, and/or investment advisory services, do exist and generally require the collection and utilization of more information, a specific list of data points is not required by, and should not now be pushed upon, general brokerage firms or on online self-directed firms simply because they make recommendations that are incidental to their business. Adoption of the Proposed Rules as proposed, would effectively force upon general brokerage and online brokerage firms a business model that they did not select.

Furthermore, firm's wishing to provide an investment advisory service, portfolio management service, or financial planning service are required to register with the SEC as investment advisers. As a result, these firms will collect the information they believe is necessary to provide services to their customers in a manner that fulfills their fiduciary obligations under SEC and common law rules. To the extent that the SEC believes that it would be appropriate to specify the customer information that such firms collect, the SEC is the appropriate regulator to do so.

E. FINRA Should Eliminate Supplementary Materials from Rule Proposals

Folio recommends FINRA eliminate supplementary material from the Proposed Rules specifically and from all rules in general. If FINRA has identified material that is important to a rule's application, it should be included in the text of the rule. Consistent with this recommendation, FINRA should rewrite the Proposed Rules such that all of the relevant content is included in the base rule, not in supplementary material labeled .01, .02 and .03. While this is perhaps a cosmetic comment it would be helpful to adopt a process that puts all rule text within the actual rule.

F. FINRA Should Not Expand Suitability Obligations to Situations Not Involving Securities

FINRA included in NTM 09-25 a request for comment regarding whether it 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. Folio strongly opposes expansion of FINRA's suitability rules in this manner. FINRA does not have the statutory mandate to expand its oversight to include activities that do not involve securities and should not attempt to do so. Absent congressional action to expand FINRA's authority beyond the securities markets, this should not be a goal of FINRA.

II. Comments Regarding Specific Provisions of the Proposed Rules

A. Elimination of Specific Criteria from the Proposed Rule

1. Policy Reasons

Folio believes that, as a matter of policy, FINRA should eliminate as many "specific" dictates in its rules as possible. The tremendous rate of change sweeping the industry because of the internet and customer access to information makes specific dictates obsolete quickly, but locks in the industry to fixed practices when they exist.

In their current form, the Proposed Rules regarding suitability set forth several specific pieces of information that a broker dealer must collect to make a suitability determination (e.g., investment experience, investment time horizon). Locking in the information that broker dealers must collect may ultimately require broker-dealers to adopt data collection practices that are ultimately unnecessary and/or inefficient. Furthermore, collecting the information specified would require broker dealers to engage in full-blown financial planning in order to make a recommendation (investment time horizon, other investments, financial situation and needs, tax status, and investment experience), which, as stated above, is not an appropriate objective of the Proposed Rules. Outlining the exact information that must be gathered in any customer profiling scenario is, therefore, bad policy. As a result, we strongly recommend that all language specifying what information ought to be collected be removed from the Proposed Rules.

2. Duplicative Requirements and Flexibility

In addition to the policy implications, FINRA should eliminate from the Proposed Rules the requirement to collect specific data elements, because it is duplicative

of existing requirements and is not flexible enough to permit broker dealers to adjust their practices to fit their specific business model.

Many of the data elements set forth in the Proposed Rules are already adequately covered by information broker dealers must collect under existing SEC and FINRA rules. For example, in the context of identity, FINRA Rule 3110 requires a broker dealer to collect a customer's name, address, age, and, for non-natural person accounts, the name of the authorized person for the account. Rule 3110 also requires broker dealers to use reasonable efforts to collect a customer's tax ID, occupation, and the name and address of the customer's employer, as well as determine whether the customer is an associated person of another member. NYSE Rule 405 more broadly requires broker dealers to use due diligence to learn the essential facts relative to every customer, cash or margin account accepted, and anyone holding a power of attorney over any account. Under SEC Rule 17a-3, if a firm has made a recommendation within the last 36 months with respect to an account, a broker dealer is required to collect for that account the customer's name, tax ID, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and investment objectives. For accounts for which a broker dealer has not made a recommendation in the past 36 months, Rule 17a-3 a broker dealer to collect only the name and address of the beneficial owner of the account.

Furthermore, the requirement to collect specific data elements set forth in the Proposed Rules are not flexible enough to take into account the various business models utilized by broker dealers. For example, broker dealers offering basic brokerage accounts and online accounts offer investment solutions, sometimes on a recommended basis, for a particular amount of investable assets. These services, especially in the self-directed context, require a broker dealer to collect a minimal amount of information from the customer. Other brokerage offerings, such as discretionary accounts managed by either registered representatives or RIAs, financial planning services (which can be centered around specific amounts of investable assets or around holistic financial life planning), trust services, and portfolio management are tied to a firm's investment advisory business and provide customers with a wider range of advice and planning. These services require not only the collection of the data elements set forth in the Proposed Rules, but also a large number of other data points, including subjective "needs and wants" information not identified in the proposal. It should, therefore, be left to each firm to determine, based on the services they provide, what, if any, information is needed from a customer and when that data is needed in the context of making a recommendation.

In light of the above, FINRA should adopt a rule that states that broker dealers should collect sufficient data and perform the analysis that it, in its professional

judgment, deems reasonably necessary to provide the services it offers and advertises to consumers. To that end, Folio strongly recommends that FINRA modify the language in proposed Rule 2111(a) to read as follows:

> (a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the facts known by the member or associated person or disclosed by the customer in response to the member's or associated person's reasonable efforts to obtain information which in the professional judgment of the member or associated person is reasonably appropriate under the circumstances. The neglect, refusal, or inability of a customer or account owner to disclose information shall excuse the member or associated person from obtaining the information.

The above language borrows from SEC Rule 17a-3 and incorporates language from proposed Rule 2111 without specifying the specific information that a broker dealer must collect. Adopting this language will ensure that the Proposed Rules do not duplicate data gathering requirements set forth in existing SEC and FINRA rules. In addition, because it is general in nature, it will allow firms that do not conduct suitability determinations the flexibility to decide what data collection is most appropriate for their business model and to meet their obligations under anti-money laundering and anti-terrorism laws.

In the event FINRA determines that specifying data elements broker dealers must collect is appropriate, the Proposed Rules should not mandate the collection of any information not specified in SEC Rule 17a-3. The financial profile data elements listed in the Proposed Rules that are not also set out in SEC Rule 17a-3 are not universally accepted as essential to performing a suitability determination. A simple survey of the most commonly used software for financial profiling of customers shows a wide range of data elements not included in the Proposed Rules. Picking only some of the most common financial profiling questions but not all, as a mandate, is bad policy. The mix of data elements suggested appears to be a collection of the SEC required data elements, the currently specified financial status questions, financial goal setting questions, risk tolerance questions, and credit determination questions. Because most broker dealers do not provide financial planning, portfolio management, and brokerage as part of their basic brokerage account offering, the approach taken by the Proposed Rules is excessive.

In addition, if FINRA determines that specifying data elements broker dealers must collect is appropriate, it should move the concept that a broker have a "reasonable expectation that the customer has the financial ability to meet such a commitment", because this is a credit concept that has little or nothing to do

with suitability. While the credit decision process at a firm is of regulatory import, it should be discussed in the general financial rules area and not as part of a suitability rule.

B. Use of Collected Data

If FINRA determines that it is appropriate to specify the information that broker dealers must collect when making a suitability determination, FINRA should also include in the Proposed Rules provisions regarding how it expects broker dealers to use such information. Requesting data from consumers builds an expectation that the data will be used for a specific purpose. If FINRA is going to mandate what data broker dealers must collect, it should also publish the exact tests that broker dealers should run against the data and what those results should dictate. If FINRA knows what information all broker dealers must collect regardless of their business model, it must also know what analysis must be done with that information and what results dictate that a broker dealer not make a recommendation. If FINRA cannot specify how broker dealers should use the information, it is disingenuous and misleading to the public for FINRA to specify specific data elements broker dealers must collect.

C. Definitions of "Investment Strategy" and "Recommended Transaction"

Because the terms act as a trigger for a broker dealer's suitability obligations, the Proposed Rules should define "investment strategy" and "recommended transaction". Leaving these terms undefined will create uncertainty and may subject certain broker dealers to suitability obligations in situations in which they have made no recommendation. For example, Folio espouses to all that investment in a diversified portfolio of equity securities is a good thing for any investor. We recommend that approach, not to any specific investor, but to everyone. In Folio's view, because every transaction executed on our on-line platform is initiated independently by a self directed investor, Folio does not make any recommendations to its customers. Yet we espouse an "investment strategy" as that concept is commonly understood. The fact is that much of the material in the financial world is similarly either descriptive of products and services or educational in the context of describing approaches that firm's believe in or find credible. That alone should not, as a matter of policy, trigger a mandatory financial profiling of a client. A clear triggering event should be required before the rule is invoked.

Furthermore, not defining "recommended transaction" will make it difficult for broker dealers to distinguish recommended transactions from discussed and/or reviewed transactions. It is often the case in the retail brokerage space that customers who are "validators" (as distinguished from "delegators" who seek to

be told what to do) have wide ranging conversations with a broker about what might be a good investment. The current industry compliance rule of thumb matches customer action within a measured period of time after information is provided to a customer as a test of whether any resulting transaction was "recommended". It would be helpful for the rule to acknowledge that a discussed transaction might not be a "recommended" one requiring profiling and analysis. Including a definition that adds more certainty to this area would not be extremely difficult in light of that fact that FINRA has already taken steps to address this issue. The discussion in NTM 01-23 provides a good foundation upon which FINRA can base the definition.

D. Information Known by the Member or its Associated Persons

Finally, Folio strongly recommends that FINRA limit the information "know by the member" that must be factored into a broker dealer's information analysis. The text of NTM 09-25 states, in part, that "... the information that must be analyzed in determining whether a recommendation is suitable would include not only information disclosed by the customer in response to the member firm's or associated person's reasonable efforts to obtain it, **but also information about the customer that is 'known by the member or associated person'**" (emphasis added). This concept should not be left as open ended as it has been proposed. A clear statement that FINRA does not require firms to "know" and apply information from other accounts at the firm where the customer is a beneficial owner or any information which could be researched but is not part of the brokerage firm's ordinary business process should be included in the Proposed Rules. Looking at someone's rants on their facebook pages is not something that firm's should be required to do.

III. Conclusion

The suitability rule is an important part of the regulatory infrastructure that supports a retail brokerage business model as distinct from a registered investment adviser business model. It is important to the brokerage industry that investment advisory concepts not be forced upon the basic brokerage model. The value to consumers of having access to brokerage services and recommendations incidental to those services for a reasonable price is enormous. We urge FINRA to reconsider how best to combine and modernize the NASD and NYSE rules in this regard. The Proposed Rules should be significantly reworked consistent with the recommendations in this comment letter before it is moved forward for adoption.

Michael A. Howard, CLU "Our Independence Is Your Strength" Since 1975

The Howard Group Financial Services 1666 Arrington Ct Macon, Georgia 31220
478-960-5185
Email: m.howardthg@gmail.com

"DEDICATED TO GROWING AND PROTECTING YOUR MONEY"
Member The National Association of Insurance and Financial Advisors
Member Society of Financial Service Professionals

FINRA released a notice late last month asking for comment by June 29th on consolidating Rules Governing Suitability. Particularly troubling is the proposal to expand "suitability obligations to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations include securities." The notice is a clear attempt to take control - read collect fees - on all product recommendations including life, long term care, health, property & casualty insurance, savings accounts, fixed annuities etc.

THIS IS TOTALLY UNACCEPTABLE!!!!!!!!! IT IS BAD FOR THE CONSUMER, COMPANIES AND AGENT.

DISGUSTED

MIKE HOWARD

-----Original Message-----
From: Eric Howell [mailto:ehowell1@bellsouth.net]
Sent: Wednesday, June 24, 2009 9:58 PM
To: Comments, Public
Subject: Expanded Suitability Potential Reg

Dear Sirs,
I am strongly opposed to extending suitability rules to include non- securities product recommendations!!! This is a state insurance department matter, not a FINRA matter.

Eric Howell, ChFC

-----Original Message-----
From: dhruby1@windstream.net [mailto:dhruby1@windstream.net]
Sent: Wednesday, June 24, 2009 4:11 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Dennis Hruby
770 N. Cotner Blvd., #301
Lincoln,, NE 68505-2344

June 24, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I have been an insurance agent for 48 years and a registered representative for more than 20 of those years. I am contacting you because I oppose strongly to expanding FINRA's suitability obligations to recommendations that do not involve securities.

People in our industry who do unsuitable sales or who are misrepresenting the products they are selling in the state of Nebraska are soon found out by our State Insurance Department and charged appropriately - closed down, license cancelled, fined and even jailed. We don't need FINRA trying to have jurisdiction over products or services which are not securities.

Our State Insurance Department does a fine job of regulating. I oppose FINRA trying to expand it's regulation to include non-securities products and services in my state or any other state.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Dennis Hruby
402-466-5559

From: bruce@dbs-ca.com
Sent: Tuesday, June 23, 2009 2:15 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Bruce Hubbard
1391 W Shaw Ave. Suite A
Fresno, CA 93711-3600

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because we do not need additional federal agency involvement where the monitoring of ethical practice and suitability for consumers is already taking place. It is a shame that a few spoiled apples have ruined it for the barrel of apples. But, the regulations are already in place and were it not for the agency of responsibility lacking the responsiveness to having been forewarned, we would not be having this discussion.

While promoting the non-expansion of FINRA, I do support the need for a federal agency to coordinate the monitoring of the insurance industry and this agency would be able to address and speak with a single voice in international relations.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Bruce W. Hubbard, CLU, ChFC, AEP
559-226-7133

From: chuck@hudspeth.com
Sent: Thursday, June 25, 2009 4:51 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Chuck Hudspeth
5635 Walnut Grove Rd
Memphis, TN 38120-2079

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I not only believe that your proposed regulations are bad for the consumer but that your current oversight regulations are as well.

In addition to the questions on the suitability questionnaire, my broker dealer requires me to submit any correspondence that I have with customers for review. My job, as I see it, is to lay out the pros/cons of various choices that a customer may make.

My broker dealer is terrified of the liability that may arise from any error that I may make and as a result essentially wants to limit my written correspondence to confirmations of business transactions we are conducting. (ie here is your policy).

I sell group & individual health insurance, life insurance, disability, long term care, etc. If I understand the new proposed rule, then I'll need to do a suitability analysis for any of this business as well. I don't have a problem with this as it is the essential question for any recommendation that I make.

The problem is that my broker dealer, will interfere with my work analyzing the pros/cons of the choices my customers make. Since the BD is not an expert in any of these fields, their position will be that cannot do my own mathematical analysis, pronounce my own judgement as the the pros/cons of a particular choice, or have an opinion as to the tax effect of a particular choice.

Instead my BD will require me to limit my written input to the sales materials that have already been created by third parties regardless of whether they are helpful or not or misleading or not.

The current set of regulatory rules, in my opinion, is already having the opposite of the intended effect. Instead of helping consumers to make better choices. Brokers leave customers with stacks of FINRA approved sales pieces, prospectuses that; while fully disclosing costs & limitations, are

inherently difficult to read, confusing, and generally not designed to illustrate the pros & cons of that particular choice.

I do not believe that through regulation that you can cause brokers to be more honest than the already are, nor can you make consumers to make smarter choices. I hope that someone will actually read this message and give it consideration.

If you have any questions, you may call me at (901) 763-2021.

Sincerely,

Chuck Hudspeth
9017632021

From: David Hunke [david.hunke@tieronebank.com]
Sent: Monday, June 29, 2009 5:11 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Importance: High

To Whom It May Concern:

I would like to voice my objection to certain aspects of the Regulatory Notice 09-25 recently issued by FINRA. While I thoroughly agree with the need to consolidate various rules and interpretations governing suitability for Securities Transactions I ADAMANTLY DISAGREE with FINRA's broadening of their powers to NON-Securities related business/transactions. I believe their over-site is most needed and should be focused on the securities oriented side of the financial planning and financial advisor business and NOT into the area of Insurance or similar products. The Insurance Business is already heavily regulated on the State Level and already has numerous suitability standards that have been implemented over the past several years, thus any additional regulation would be redundant and time consuming for both our clients and the advisors who work with them to reach their long-term financial goals.

I have been in the industry for over 15 years and when I first got into the business back in 1993 they spoke regularly of a "paperless business" within a few years. Since that time we are filling out twice as much paperwork and I believe clients and representatives are getting more confused by the additional forms and regulations that are being imposed almost on a daily basis.

My recommendation is not so much more regulation but stronger penalties for those representatives that fail to live up to their obligations to their clients, heavier focus on Ethical Business behavior and training, as well as stronger standards for those businesses (insurance carriers and investment companies) that bring new products to the market place. That I believe would help cure a lot of the issues that we are currently seeing in this environment and the problems that have been created by careless advisors and investment firms over the past decade.

David L. Hunke
Financial Consultant
Group Manager
TierOne Financial
(402) 554-8027 or Cell (402) 657-3119

From: Carol Hurley [carolhurley@hurley2.com]
Sent: Thursday, June 25, 2009 3:28 PM
To: Comments, Public
Subject: FINRA regulations on non-security products

Dear Ms. Asquith,

I have been in the insurance industry for more than 25 years. Most of that time has been focused on disability insurance products. While I understand the need for regulation and oversight in light of recent events in the financial services industry, I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. I am well aware that insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please accept this recommendation when considering any changes to FINRA's expansion of suitability rules – it would only hinder the flow of business and make it more difficult for us to help our clients.

Take Care,

Carol

We earn our living when times are good - We prove our worth when times are bad

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Pennsylvania's Best 50 Women in Business 2009

Carol R. Hurley

Hurley Associates
3508 Fifth Avenue
Pittsburgh, PA 15213
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Phone 412-682-6100
Outside PA 866-335-3301
Fax 412-682-3299

From: Denise Stirewalt [mailto:vhbennett2@ft.newyorklife.com]
Sent: Friday, June 26, 2009 8:53 PM
To: Comments, Public
Subject: Expansion of Suitability obligations

As a licensed Insurance Professional and Reg Rep in the industry for over 14 years I strongly oppose the action for FINRA to expand the suitability requirements that do not involve securities.
It is my opinion that FINRA should focus on the areas of the industry that they have jurisdiction over and allow the states to regulate these products. Doesn't FINRA already have enough to regulate without creating more unnecessary confusion within the industry.

Thank you in advance for taking the time to review my position.

Vicki Hutchens-Bennett LUTCF, CLTC
Financial Services Professional
New York Life Insurance Company Agent
Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC)
104 Rye Cove Street PO Box 309
Stuart, VA 24171
VA (276) 694-8003 NC (704) 371-8003 Fax (276) 694-8004

Trust in the Lord with all your heart and soul, lean not on your own understanding; in all ways acknowledge him and he will guide your paths. Proverbs 3: 5-6

June 26, 2009

Marcia E. Asquith
Office Of The Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: J.P. Turner & Company, LLC Comment Letter on Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

J.P. Turner & Company, L.L.C. ("J.P. Turner") is a fully disclosed, independent broker-dealer serving over 500 registered representatives and financial advisors in over 150 branches. J.P. Turner appreciates the opportunity to comment on proposed consolidated FINRA rules governing suitability and know-your-customer (KYC) obligations.

FINRA seeks comment on whether it 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. We oppose efforts to expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, we oppose FINRA's suggestion that it expand the 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.

FINRA seeks comment to include modified forms of NASD Rule 2310 and NYSE Rule 405 in the Consolidated FINRA Rulebook. The proposed Rule expands suitability criteria to include a client's investment time horizon, liquidity needs, and risk tolerance, which are important considerations. However, at J.P. Turner we believe they are best judged at the portfolio level. The Proposed Rule would instead require each securities transaction to be suitable based upon these additional criteria. We believe this would have unfortunate unintended consequences for investors who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods.

J.P. TURNER
& COMPANY

Proposed FINRA Rule 2111 contains changes regarding the gathering and use of information as part of the suitability analysis. The Proposed Rule would require independent broker-dealers to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. We believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection. We, therefore, oppose this aspect of the Proposed Rule.

Currently, the government believes more needs to be done to effectively harmonize the regulatory structure for broker-dealers and investment advisors. One such idea is creating one standard of care for all professionals providing personalized financial advice. The resolution of this debate has the potential to make the Proposed Rule a moot point. As a result, we urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

Thank you for providing us the opportunity to comment on this important issue. If you have any questions or require clarification for any of the comments in this letter, please contact me at (404) 479-8300.

Sincerely,

Michael Isaac
Chief Compliance Officer
J.P. Turner & Company, LLC

From: George W. Jackson [mailto:jxnconsult@cox.net]
Sent: Thursday, June 25, 2009 11:44 PM
To: Comments, Public
Subject: Expanding Suitability Rules to Non-Securities Transactions

While I can understand the need for our regulations to be more streamlined, I cannot support FINRA extending the suitability rules into an arena which does not involve securities, which may mean that all insurance transactions would have to be placed through a Broker/Dealer for compliance, etc. This places an unnecessary burden on the B/D as well as requiring them to supervise something about which they have no expertise or understanding. FINRA should vigorously prosecute any representative who recommends a product or service which is not suitable for the client. However, FINRA has no jurisdiction in non-security business and should not expand into any area which does not fall under that jurisdiction.

George W. Jackson
Registered Representative

Cornell University
Cornell Law School

William A. Jacobson, Esq.
Associate Clinical Professor
Director, Securities Law Clinic
G57 Myron Taylor Hall
Ithaca, New York 14853
t. 607.254.8270
f. 607.255.3269
waj24@cornell.edu

June 27, 2009

Via Electronic Filing

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

RE: FINRA Request for Comment 09-25 (Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations)

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") to consolidate FINRA rules governing suitability and know-your-customer obligations. The Cornell Securities Law Clinic (the "Clinic") is a Cornell Law School curricular offering, in which law students provide representation to public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see http://securities.lawschool.cornell.edu.

The Rule Proposal seeks to better protect investors by incorporating modified forms of NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405, addressing know-your-customer obligations, in the Consolidated FINRA Rulebook. Consequently, two rules are proposed: (1) The new suitability rule, proposed FINRA Rule 2111, which will replace the NASD Rule 2310; and (2) the new know-your-customer rule, proposed FINRA Rule 2090.

The Clinic would like to note as an initial matter that the suitability and know-your-customer obligations are critical to protecting investors. In light of this, the Clinic generally supports the Rule Proposal because the Rule Proposal effectively addresses various loopholes that member firms have used in the past to avoid these obligations. The Clinic, however, believes that a few terms in the Rule Proposal require additional clarification to facilitate successful implementation of the new rules and minimize possible future litigations that may arise from ambiguous language.

A. The Clinic Generally Supports the New Suitability Rule (FINRA Rule 2111)

The proposed FINRA Rule 2111 introduces four material changes. First, the proposed FINRA Rule 2111 applies suitability obligations to a recommended transaction *or* investment strategy involving a security or securities. Second, the proposed FINRA Rule 2111 heightens the standard for gathering and use of information as part of suitability analysis. Third, the proposed FINRA Rule 2111 clarifies the partial exemption for transactions or investment strategies recommended to institutional customers. Fourth, the proposed FINRA Rule 2111 requires firms to use reasonable efforts to collect more information about their customers than enumerated under NASD 2310(b); namely, firms must use reasonable efforts to obtain the customer's age, other investments, investment experience, investment time horizon, liquidity needs, and risk tolerance in addition to the customer's financial status, tax status, and investment objectives.

Furthermore, the new Supplementary Material codifies in the Consolidated FINRA Rulebook the requirement of fair dealing, the three general types of suitability obligations, and the requirement that a recommendation of a transaction or investment strategy involving securities be consistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

The Clinic believes that the proposed FINRA Rule 2111 effectively addresses a loophole that member firms have used in the past to escape the suitability obligations. Firms that recommended a strategy arguably could have escaped the suitability obligations if they were not recommending a particular transaction. Under the proposed FINRA Rule 2111(a), those firms will be subjected to suitability obligations because the obligations extend to recommended investment strategies.

The Clinic, however, believes that the term "recommended investment strategy" in the proposed FINRA Rule 2111 requires additional clarification. Non-exclusive examples of what constitutes a "recommended investment strategy" would offer clear guidance to firms regarding when suitability obligations apply. For instance, codifying a "hold" recommendation as one of the examples of a recommended investment strategy would clear any alleged confusion as to whether or not "hold" recommendations are part of an "investment strategy."

Also, the Clinic is concerned that the disappearance of certain examples used in NASD IM-2310-2, explaining what activities constitute a violation of the fair dealing responsibility, may create unnecessary confusion. Recommendation of speculative low-priced securities (NASD 2310-2(b)(1)), excessive trading activity (NASD 2310-2(b)(2)), trading in mutual fund shares (NASD 2310-2(b)(3)), and fraudulent activities (NASD 2310-2(b)(4)) will not be enumerated in the proposed FINRA Rule 2111. NASD 2310-2(b)(5), addressing the customer's financial ability, is the only example that will be enumerated under the Supplementary Material .03 of the proposed FINRA Rule 2111.

The Clinic is concerned that firms may assert that activities which fall under the old NASD 2310-2(b)(1)-(4) will no longer violate the responsibility of fair dealing under the proposed FINRA Rule 2111 if such activities are not enumerated in the new rule or Supplementary Materials. To safeguard against this, the Clinic encourages the proposed FINRA Rule 2111 to include all the examples enumerated under NASD 2310-2(b).

Lastly, the Clinic is concerned that quantitative suitability, according to the Supplementary Material .02 of the proposed FINRA Rule 2111, is applicable only if firms have actual or *de facto* control over the account. The Clinic believes that a recommendation that is excessive in light of the customer's profile will always be unsuitable for the customer regardless of whether the member firm has control over the account. Moreover, the term "*de facto*," which is not defined in the Supplementary Material, may cause unnecessary confusion. Consequently, the Clinic recommends that the control requirement be deleted.

B. The Clinic Generally Supports the New Know-Your-Customer Rule (FINRA Rule 2090)

The proposed FINRA Rule 2090 differs from Incorporated NYSE Rule 405 in that the new know-your-customer rule requires firms to use due diligence, in regard to the opening *and* maintenance of every account, to know and retain essential facts concerning every customer.

The Clinic believes that the new know-your-customer rule, proposed FINRA 2090, is a positive improvement from the Incorporated NYSE 405 in protecting investors. The know-your-customer obligations would now apply regardless of whether there had been a recommendation.

The Clinic, however, believes that the proposed FINRA Rule 2090 can be improved in a few different ways. First, the proposed FINRA Rule 2090 removes the old Incorporated NASD 405(1) requirement that firms must use due diligence to learn the essential facts relative to every "order" and "cash or margin account." Although the proposed FINRA Rule 2111's "recommended investment strategy" or the proposed FINRA Rule 2090's "maintenance of every account" seems intended to incorporate the concept of learning the essential facts relative to every "order" and "cash or margin account," the language of the proposed FINRA Rule 2090 could be more clear on this matter. The Clinic is concerned that firms may mistakenly assert that the deletion of the terms "order" and "cash or margin account" means that their know-your-customer obligations will only extend to learning about the customer.

Second, the proposed FINRA 2090 states that the customer's financial profile and investment objectives or policy are essential to knowing the customer. The Clinic, however, believes that further clarification of the term "essential facts" is desirable. For instance, the Clinic encourages the proposed FINRA Rule 2090 to incorporate the nine factors enumerated in the proposed FINRA Rule 2111(a). The Clinic believes that each of these nine factors is essential to knowing the customer. Furthermore, these nine factors, if incorporated, will provide a clearer guideline as to the meaning of "essential facts."

C. Conclusion

The Clinic greatly appreciates the opportunity to comment on this Rule Proposal. The Clinic generally supports this Rule Proposal because the Rule Proposal addresses various loopholes that firms could have used to skirt the suitability and know-your-customer obligations. The Clinic, however, believes that additional improvements can be made. Clarification of terms such as "recommended investment strategy," in the proposed FINRA Rule 2111, and "essential facts," in the proposed 2090, will provide a clearer guidance to firms regarding what is expected of them. Also, importation of non-exclusive examples from old rules would address the confusion which may arise from removal of certain terms in the new rules.

Respectfully submitted,

William A. Jacobson

William A. Jacobson, Esq.
Associate Clinical Professor of Law
Director, Cornell Securities Law Clinic

Sang Joon Kim

Sang Joon Kim
Cornell Law School '11

From: David.C Janson [David.C.Janson@mwarep.org]
Sent: Tuesday, June 23, 2009 3:33 PM
To: Comments, Public
Subject: proposed non-securities regulation
Attachments: David.C Janson.vcf

I am a registered rep and licensed life and health agent. I strongly **oppose** the idea that FINRA's authority be expanded to non-securities products and services. I believe it would take FINRA out of it's area of expertise and would not be beneficial to the industry, it's consumers and the American people.
I do support the discipline and prosecution of those firms and individuals who engage in unethical and misleading sales practices.

Thank you!

David C. Janson CLU,ChFC,LUTCF
Registered Representative
Securities offered through MWA Financial Services Inc. a wholly owned subsidiary of
Modern Woodmen of America
1701 1st Avenue, Rock Island, IL 61201
309-558-3100
Member: FINRA, SIPC

Modern Woodmen
FRATERNAL FINANCIAL

From: Steve Jedlund [mailto:steve@jedlund.com]
Sent: Tuesday, June 23, 2009 11:49 AM
To: Comments, Public
Subject: FINRA Expansion of Regulatory Authority

June 23, 2009

I am writing to you because I do have strong concerns about the expansion of FINRA oversight and regulations in general and to non securitized products or services. I am a licensed insurance agent and registered representative and have worked in the industry for 24 years. While I do believe that those that misrepresent their products or services should be aggressively prosecuted, the rules are already on the books to do so. We are already faced with reams of meaningless paperwork that really does not protect the client from those that would mislead or cheat. Adding additional layers of bureaucratic regulations will simply add to internal expense structures that in the end takes away value from the client. I have seen many times the clients eyes 'glaze over' when the disclosure statements and prospectus documentation, that is literally as thick as a city phone book in many cases, is laid on the table. It is so much info that the pertinent facts to their decision process can be lost.

I would encourage you to enforce the rules that are on the books and not expand current FINRA areas of authority.

Steven D. Jedlund
North Star Resource Group
CRI Securities LLC
Securian Financial Services

-----Original Message-----
From: jensentodd@qwestoffice.net [mailto:jensentodd@qwestoffice.net]
Sent: Friday, June 26, 2009 8:00 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Todd Jensen
Box 244
Minden, NE 68959-0244

June 26, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities for these reasons:

1)FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

2)Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

3) There is currently active debate concerning the standard of care which broker/dealers and investment advisors owe to their clients and whether such standards should be expanded going forward. It would be inappropriate for FINRA to expand current suitability requirements while this debate is underway, since further broad-scale changes may be made within a matter of months.

For these reasons, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Todd Jensen

From: Jewell, Rodney [mailto:rejewell@finsvcs.com]
Sent: Friday, June 26, 2009 10:58 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am an insurance agent and registered rep with MassMutual in Omaha ,NE.

I MA NOT SURE WHY FINRA needs to oversee products that are not considered investments. Define what an investment is. If a product, fund ,account, asset , whatever they call it. If it has those characteristics , supervise it .

Then , if a bank, insurance company, broker , manager , trustee builds a program , they know exactly what will expected for reporting and boundaries. Of course some may want to maintain it isn't an investment ,those will be tough calls .

We are very regulated at my level by both the state and national groups. Rogue reps or agents don't last very long because you can't fool too many people very long on small transactions .Large players have assets to create a elaborate schemes to hide what they are doing via complex schemes. They can hide in their complexity.
Not too many people gaming the system sponsor little league teams . They usually don't call attention to themselves . Some of the recent folks in the news who are in the news, become news because they did appear to cheat in public. The system caught them .It warned . it worked , a little late , BUT they were caught .

The large institutions need to be inspected and given clear rules to create commerce on a worldwide basis with a level playing field under a logical rule of law.
I THINK that consumers that have a local rep helping them with their 401 k, mutual funds life insurance purchases are well serviced because I feel I am well regulated and supervised.

When those small monthly premiums and contributions get moved into the bigger pot, usually beyond the parent company, and represent billions of dollars is where the focus needs to be .

Rod Jewell, CLU, CFBS

1-800-513-3272 (FBPC)
Direct: (402) 343-8319 Switchboard: (402) 397-8600
Cell: (402)-681-3424 Fax: (402)397-2217

rejewell@finsvcs.com

Please do not send any security transactions (mutual funds, variable annuities, variable life or stock trades) by fax, email or voicemail as orders of this nature cannot be honored.

From: Johnson, Ann W. [ajohnson@finsvcs.com]
Sent: Monday, June 29, 2009 3:55 PM
To: Comments, Public
Subject: FINRA, and Regulatory Notice 09-25,

Please pass along my voice in Opposition as to the expansion of suitability obligations, to those recommendations that will involve FINRA, oversight of products, services, and practices which do NOT involve securities. As a licensed Insurance Professional, and Registered Representative I am opposed to the practices which do not suit, nor better a client's position. More importantly, we are currently well regulated by and responsible to our State Regulators, Insurance Departments of the States where we are licensed, and the Companies who license, train, and keep us in compliance in the marketing and sale of their products/services.

States (as Ohio) do a very good job currently in not only supporting, educating the agents, but regulating, controlling, etc., as well!
What WISDOM is there in overlaying a Government Bureaucracy? I see none.

We certainly are in danger of perhaps doing too much, too soon, in lieu of seeing where we need help, and plug the gaps with appropriate help, and regulations which can be adherred to, and which we can monitor ourselves; as we are currently doing with the help of the States and Companies! More Self-Reliance and Accountability, and Less Government/LessTaxes!
Ann W. Johnson, LUTCF, Member of NAIFA. Thank You!!!

From: Diana Johnston [djohnston@jacounter.com]
Sent: Tuesday, June 23, 2009 12:07 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

To Whom It May Concern:

This is in response to your request for comment on the above noted Regulatory Notice.

I oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

While you may believe this to be a noble gesture needed to take care of clients across all areas of our financial planning industry, please note that most of us in this industry see it as one more way you are trying to manipulate the regulations to punish 99.5% of us who are doing our job the right way, to try to catch the other .5% who are giving our industry a bad name. We truly care about doing what is best for our clients and would do it whether a regulation told us to or not. Your forms create confusion and frustration with our clients who just want help putting a good financial plan together to help them achieve their goals.

As an OSJ Manager for the last 12+ years, I have seen our disclosure forms change many times, always getting longer and more complicated. Many times clients balk at completing the forms as they feel it is an invasion of their privacy. To extend this invasion to other non-securities products is beyond the scope of your authority in my opinion, and should not be granted.

Diana Johnston, CLU, ChFC, LUTCF
Registered Principal
Compliance & Broker Relations Manager

J. A. Counter & Associates, Inc.
1477 S. Knowles Avenue, Suite 200
P O. Box 387
New Richmond, WI 54017
800-334-9252
Direct: 715-246-8064
Cell: 715-684-9126
Fax 715-246-8090

ING

ING FINANCIAL PARTNERS

Robert B. Joki, CLU
Registered Representative

June 25, 2009

Marcia E. Asquith, Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Reference: FINRA Regulatory Notice 09-25

Dear Commissioner Asquith:

I have been reading with great concern the proposed FINRA regulatory notice 09-25, whereln it is proposed that all business be regulated through FINRA. I strongly oppose this regulatory notice for the following reasons.

I have been involved in the life insurance business since March of 1969 and the securities business since September of 1973. As part of my insurance operation, we regularly get involved in the sale of life insurance, critical illness insurance, long term care insurance, disability income insurance and overhead expense coverage. I do not handle property/casualty insurance. When we submit an application, sufficient information must be sent to an underwriter whose job includes confirming that the insurance is suitable for the customer and affordable for the customer.

As an example in the critical illness, disability income and overhead expense arena, as part of the underwriting process we are required to provide financial information. This usually includes two years of income tax return to make sure the amount of coverage is appropriate for the individual's financial situation.

As an example in the life insurance area, financial information is generally not required on amounts of insurance under $250,000. For larger amounts of insurance, the underwriter wants to be absolutely sure there is financial justification for the purchase of the insurance. It is there intent to make sure the customer is not over insured or paying too much in premiums. In the area of fixed annuities, all of the annuity companies that we work with already require the completion of financial suitability documents by the representative.

My concern is that we would be putting an extra layer of paperwork and bureaucracy into the system. In my opinion this is unconscionable. Right now there is more than adequate underwriting and suitability justification for the non-securities financial products.

Feel free to contact me directly if you wish to discuss any of these topics.

Very truly yours,

Bob Joki, CLU

RBJ/sn

6912 - 220th Street SW, Suite 303
Mountlake Terrace, WA 98043
425.672.7984
Seattle line: 206.441.9332
Fax: 425.771.2736
Email: bob.joki@ingfp.com

-----Original Message-----
From: skagawa@thepacificbridgecompanies.com
[mailto:skagawa@thepacificbridgecompanies.com]
Sent: Thursday, June 25, 2009 1:01 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Stephen Kagawa
825 S. Primrose Avenue, Ste. C
Monrovia, CA 91016-3413

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a licensed insurance professional and registered representative, I write to strongly object to the expansions of FINRA's suitability obligations with regards to recommendations that do not involve securities.

While I agree that unsuitable and misleading sales practices should be aggressively prosecuted and subject to appropriate sanctions, I disagree with the the expansion noted, an implication that FINRA has jurisdiction over products and services which are not deemed securities. Furthermore, it seems far-fetched that FINRA or broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which may lead down paths contrary to consumer protection goals for which they were otherwise intended.

Thank you for your efforts and considerations on behalf all we serve.

Aloha,

Stephen Kagawa
626-303-5890

Particularly troubling is the proposal to expand "suitability obligations to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations include securities.

Please leave the suitability requirments as they are. Expanding them to other products not related to securities is not needed.

Grover Kahl
G. T. Kahl Financial Services LLC
734-941-7310

Austin A. Kanter, CLU, ChFC
Registered Representative,
Investment Advisor Representative,
Equity Services, Inc.

June 25, 2009

Ms. Marcia E. Asquith
Office of Corporate Security
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 09-25

Dear Ms. Asquith,

I have been in the life insurance business for sixty years. I have been a licensed security representative for over forty years.

Your Regulatory Notice 09-25 appears to be overly broad. It also appears to sweep all non-security life insurance transactions under your jurisdiction. This will force us all to place any life insurance transaction through our broker/dealer. This is an unnecessary regulation. We are already regulated by each State department of insurance. We abide by all the laws. We do not need an extra level of Governmental supervision.

I would appreciate that when you review your Notice 09-25 that you specifically exclude any non-security related life insurance product.

Sincerely yours,

Austin A. Kanter, CLU
Chartered Financial Consultant

AAK/cm

Daniel L. Kanter
Registered Representative,
Investment Advisor Representative,
Equity Services, Inc.

June 25, 2009

Ms. Marcia E. Asquith
Office of Corporate Security
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 09-25

Dear Ms. Asquith,

Your Regulatory Notice 09-25 overreaches necessary consumer protection by its current inclusion of non-security insurance products.

I have been a licensed security representative as well as a licensed insurance agent for nearly seventeen years.

Regulatory Notice 09-25 appears to be overly broad. It also appears to sweep all non-security life insurance transactions under your jurisdiction. In addition to the unnecessary redundancy of statutory consumer protection, this will force insurance professionals all to place all future life insurance transactions through our broker/dealer. This is an unnecessary regulation. We are already regulated by each State department of insurance. We abide by all the laws. We do not need an extra level of Governmental supervision.

I would appreciate that when you review your Notice 09-25 that you specifically exclude any non-security related life insurance product.

Sincerely yours,

Daniel L. Kanter

DLK/

From: Derenda Keating [mailto:derenda.keating.hg59@statefarm.com]
Sent: Tuesday, June 23, 2009 1:04 PM
To: Comments, Public
Subject: Publis comment

As a professional in the insurance and financial services industry I wish to go on record opposing FINRA's consideration of wedging itself into regulation of non securities products by expanding suitability requirements into said non securities products. I am appalled at this current federal government power grab.

In my more than 30 years in this business I have never witnessed such behaiors by our former capitalistic government. We need LESS regulation. Not more.
Derenda Keating, CLU, ChFC, LUTCF

Sent from my BlackBerry Wireless Handheld

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ATLANTA
AUSTIN
HOUSTON
NEW YORK
TALLAHASSEE
WASHINGTON DC

June 29, 2009

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-25: Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

We are submitting this letter on behalf of our clients, John Hancock Life Insurance Company, MetLife, Inc., and The Prudential Insurance Company of America (together, the "Companies"), in response to Regulatory Notice 09-25, "Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations" (the "Notice" or "09-25").

The Notice requests comment on two proposed rules (collectively, the "Proposed Rules"): Rule 2111 ("Proposed Rule 2111" or "Proposed Suitability Rule"), which 09-25 explains is modeled on NASD Rule 2310 and addresses member firm suitability obligations; and Rule 2090 ("Proposed KYC Rule"), which 09-25 explains is based on a modified version of NYSE Rule 405(1) and addresses know-your-customer ("KYC") obligations.

Our clients appreciate the opportunity to provide comments on the Proposed Rules. The comments herein focus on the Proposed Rules' impact on the retirement plan marketplace. The Companies, together with their affiliated broker-dealer firms are significant participants in this specialized yet important marketplace, including through the sale of variable and fixed annuities and mutual funds to 401(k), 403(b), 457, and other types of tax-qualified retirement plans. We note that each of the Companies is commenting separately through various trade groups and other associations on broader aspects of the Proposed Rules.

As set forth below, the Companies have comments on the following two aspects of Proposed Rule 2111:

(1) the exemption for "institutional customers;" and

(2) the expansion reflected in Proposed Rule 2111 to subject recommendations of "investment strategies" to a suitability obligation.

In addition, the Companies want to respond to the Notice's request for comment on whether the Proposed Suitability Rule should be applied to any recommendation made by a member firm, regardless of whether such recommendation is related to a security. We also wish to comment on Proposed Rule 2090's imposition of a KYC obligation "in regard to the . . . **maintenance** of every account" (emphasis added). Each of these comments is set forth below.

PROPOSED RULE 2111 – SUITABILITY RULE

1. Proposed Rule 2111's Exemption for Recommendations to Institutional Customers

Proposal. As 09-25 notes, the suitability obligation currently applicable to institutional customers is outlined in NASD IM-2310-3, which discusses relevant factors for exempting a member firm from a suitability obligation when effecting transactions for such customers. Proposed Rule 2111 takes a different approach, identifying three critical factors for such an exemption, one of which is whether the institutional customer affirmatively indicates that it is willing to forego the protection of the customer-specific obligation of the Proposed Suitability Rule. The other two factors, which are rooted in NASD IM-2310-3, focus upon the firm's reasonable basis for believing that the institutional customer is capable of analyzing the risks of investments independently and for believing that the institutional customer is exercising independent judgment. According to the Notice, FINRA also seeks to eliminate "internal inconsistency" by substituting the definition of "institutional account" in NASD Rule 3110(c)(4) for the definition of "institutional customer" currently set forth in NASD IM-2310-3.

Comments. At the outset, we note that NASD IM-2310-3 has been of crucial importance to member firms conducting business in the retirement plan marketplace. In that marketplace, the member firm generally has a customer relationship with the plan sponsor or trustee, not the plan participant. In many cases, the plan sponsor or trustee meets the definition of "institutional customer" in NASD IM-2310-3. Further, in the usual situation, the member firm makes an "open architecture" platform of mutual funds and group annuity products available to the plan sponsor. Thus, the member firm's role is very limited and the products being offered are straightforward investment products. Finally, many plan sponsors and trustees have demonstrated a preference for independent judgment in the case of securities transactions. All of

these factors generally support a determination that the member firm providing broker-dealer services to the retirement plan customer can rely on NASD IM-2310-3 with reference to any suitability obligation, yet they would be disregarded under Proposed Rule 2111. Accordingly, any changes to the approach reflected in NASD IM-2310-3 are likely to have significant impact on business practices in the retirement plan marketplace.

Affirmative Waiver. In light of the nature of the retirement plan marketplace, we urge that FINRA not advance that aspect of the proposal that would require an institutional customer to affirmatively indicate that it is willing to forego the protections afforded by the Proposed Suitability Rule. The Companies are concerned that retirement plans and/or their fiduciaries would refuse to sign affirmative waivers, even in circumstances where member firms clearly are not making recommendations, simply because signing such a waiver would in-and-of itself raise significant concerns for retirement plans and their fiduciaries, and would require analysis under fiduciary standards established by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") – both a burden and a hypothetical exposure that plan fiduciaries might simply decline to undertake. This would create significant disruption in the retirement marketplace.

Rather, instead of the "affirmative waiver" requirement, FINRA should follow the existing framework, which has worked well since 1996 and appropriately and directly provides that the member firm must make a determination of an institutional customer's capability to analyze investment risk and exercise independent judgment, which is affected by the totality of the written or oral understandings between the broker-dealer and the institutional customer. Where a broker-dealer has a reasonable belief that an institutional customer is capable of evaluating risk and is exercising independent judgment, a member's obligation to determine suitability under Proposed Rule 2111 should be deemed to be satisfied. A written "waiver" of suitability should not be required.

Definition of Institutional Account. Also, we urge that FINRA not advance that aspect of Proposed Rule 2111 that would substitute the definition of "institutional account" that appears in NASD Rule 3110(c)(4) in place of the definition of "institutional customer" that appears in NASD IM-2310-3. The "institutional account" definition is limited to banks, savings and loans associations, insurance companies, registered investment companies, registered investment advisers, or any other entity with total assets of at least $50 million. However, IM-2310-3 allows for a broader class of investors, indicating that it is more appropriately applied to an institutional customer with at least $10 million invested in securities in its portfolio or under management.

We believe that the current class of institutional customer eligible under NASD IM-2310-3 should be retained. As indicated above, member firms operating in the retirement plan marketplace have had long and extensive experience operating under that interpretive material. In their experience, that IM has afforded flexibility and has appeared to operate effectively. We

note that 09-25 does not express any concerns with the current class of institutional customers, other than its inconsistency with other NASD rules.

If FINRA determines that it is necessary to harmonize the "institutional customer" concept in the Proposed Suitability Rule with other rules, we would urge that FINRA refer to the definition of "institutional investor" in NASD Rule 2211(a)(3), instead of relying solely on NASD Rule 3110(c)(4). Under NASD Rule 2211, institutional sales material may be distributed only to "institutional investors," who are defined to include several different categories of persons, including those identified in NASD Rule 3110(c)(4). We believe this definition is better tailored to address the structure of the retirement plan marketplace since it adds the following entities:

- employee benefit plans meeting the requirements of Section 403(b) or Section 457 of the Internal Revenue Code with at least 100 participants;
- qualified plans with at least 100 participants; and
- governmental entities or subdivisions thereof.

We request that FINRA revise Proposed Rule 2111(b) to be consistent with standards for communications with institutional investors to ensure that the types of plans identified above are clearly covered by the portion of the Proposed Suitability Rule applicable to institutional investors.

We further request that FINRA confirm that an entity that is outside the list of plans identified above (e.g., a 403(b) plan with 90 participants) may be determined by a broker-dealer to be an "institutional customer." We note that FINRA may wish to advance such a standard in terms of there being a rebuttable presumption against determining that an entity that is outside the list of plans identified above is an institutional customer. The rebuttable presumption could only be satisfied by the broker-dealer undertaking and formalizing a due diligence review of the plan sponsor. We further note that such due diligence determinations would be subject to the review of FINRA examiners.

2. Applicability of Rule 2111 to Recommendations of "Investment Strategies"

Proposal. Proposed Rule 2111 would apply the suitability obligation to recommendations of "investment strategies" involving securities. According to the Notice, this change "would codify longstanding SEC and FINRA decisions and other interpretations stating that NASD Conduct Rule 2310 covers both recommended securities and investment strategies."

Comment. Our clients have serious concerns about a proposal to apply the long-standing "suitability" obligation to something other than a securities transaction. The Notice has offered no guidance or explanation regarding what constitutes an "investment strategy," let alone what constitutes a "suitable" investment strategy recommendation. Accordingly, we urge FINRA to remove the reference to "investment strategy" in Proposed Rule 2111(a).

If FINRA determines to proceed with a rule proposal that would extend the suitability rule to recommendations of "investment strategies," we ask that FINRA explicitly acknowledge that any information determined to be "investment education" under ERISA is specifically excepted from coverage. By way of background, in 1996 the Department of Labor published detailed guidance regarding the following four categories of information that were determined to be of an educational nature:

- descriptive information about the plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;
- general financial and investment information, including basic investment concepts, historic differences in the return of asset classes, effects of inflation, and assessment of investment horizon and risk tolerance;
- generic asset allocation models (including models relating to specific plan investment options if specified disclosures are provided) that are based on generally accepted investment theory, are not individualized, and are accompanied by specified disclosures; and
- interactive investment materials that, essentially, incorporate the above.[1]

Providing for this type of an exception would allow for continued use of material of an educational nature that has long been accepted in the retirement plan marketplace and sanctioned by the Department of Labor.

3. Applying Proposed Rule 2111 to Non-Securities Product Recommendations

Proposal. The Notice requests comment on whether Proposed Rule 2111 should apply to recommendations by member firms of transactions in non-securities products.

Comment. We believe that there is no basis to apply Proposed Rule 2111 to recommendations of non-securities products. In many cases, non-securities products are subject to separate bodies of law governing their sale and marketing. We further believe that any serious consideration about extending the rule to non-securities products should only be undertaken after

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[1] *See* 29 C.F.R. Sect. 2509-96-1(d).

careful analysis and deliberation. Advancing an issue of this magnitude in the context of an isolated rule proposal is likely to lead to fragmented, overlapping and/or conflicting regulation.

PROPOSED FINRA RULE 2090 – KNOW YOUR CUSTOMER

Proposal. Proposed Rule 2090, modeled after NYSE Rule 405(1), would impose certain KYC obligations on FINRA firms. While Rule 2090 borrows heavily from Rule 405(1), it does impose an additional obligation on member firms to meet the standards of the rule "in regard to the . . . maintenance of every account."

Comment. We believe that Proposed Rule 2090's requirement to meet the standards in regard to the maintenance of an account is vague and, as such, would lead to practical implementation issues, particularly in the retirement plan marketplace. Accordingly, we urge FINRA to revise Proposed Rule 2090 to delete the requirement that a firm be subject to a KYC obligation with respect to the maintenance of every account.

Alternatively, if FINRA determines to impose the KYC obligation on the maintenance of accounts on an ongoing basis, we believe that FINRA should propose additional guidance regarding what that requirement would entail, and provide an opportunity for further comment. For example, FINRA should propose guidance regarding the nature of an account in the 403(b) market, 401 market and 457 market, as well as other markets, and the elements of essential facts that should be maintained about each account.

CONCLUSION

John Hancock Life Insurance Company, MetLife, Inc., and The Prudential Insurance Company of America, appreciate the opportunity to comment on the Proposed Rules under FINRA's consolidated rulebook project.

Please do not hesitate to contact me (212.389.5052) if you have any questions.

Sincerely,

Clifford E. Kirsch

Clifford E. Kirsch

cc: Paul Cellupica, MetLife, Inc.
Jack Ewing, The Prudential Insurance Company of America
Thomas Tagliamonte, John Hancock Life Insurance Company
Susan Krawczyk

8454775.1

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ATLANTA
AUSTIN
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WASHINGTON DC

June 29, 2009

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-25: Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to Regulatory Notice 09-25, "Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations" (the "Notice").

As described in the Notice, FINRA proposes to use NASD Conduct Rule 2310 as the model for FINRA Rule 2111 ("Rule 2111"), addressing the suitability obligations of member firms. In addition, the Notice indicates that FINRA proposes FINRA Rule 2090 ("Rule 2090") based on a modified version of NYSE Rule 405(1) that addresses know-your-customer ("KYC") obligations. Each of the proposed FINRA Rules makes modifications to the existing rules upon which they are based. The Committee appreciates the opportunity to provide comments on the proposed FINRA Rules.

PROPOSED RULE 2111 – SUITABILITY

As described in the Notice, Rule 2111 includes a number of changes to existing NASD Conduct Rule 2310, and also requests comments on certain specific aspects of the proposed

[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.
8454821.1

FINRA Rule. As set forth below, the Committee has comments on the following aspects of Rule 2111:

(1) the proposed applicability of suitability obligations to "investment strategies" as well as securities;

(2) the proposed expansion of a member firm's duty to asses any recommendation in light of any information "known by the member or associated person;" and

(3) the request for comment on expanding the suitability obligation to apply to any recommendation of the member firm, regardless of whether such recommendation is related to a security.

As a general matter, the Committee is concerned with any changes being made to the suitability obligations that are implemented in advance of clear resolution of certain regulatory reform efforts being seriously considered by Congress and the Obama Administration. For example, the Department of the Treasury's report "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation" (the "White Paper") provides recommendations that could have a serious impact on the broker-dealer business. Under the White Paper, the Treasury Department recommends that broker-dealers providing investment advice should be subject to a fiduciary duty. The Committee is concerned that, depending on the timing of the possible rule changes, member firms could face **two** sets of significant rule changes impacting their review of customer transactions in rapid succession: FINRA changes to the suitability rules under Rule 2111; and large scale legislative changes to the standard of care owed by a broker-dealer under the recommendations of the White Paper. Each of these changes, on their own, would result in significant costs and expenditure of resources to member firms.

Applicability of Rule 2111 to Recommendations of "Investment Strategies." Rule 2111 proposes to apply the suitability obligations to recommendations of "investment strategies" involving securities. The Notice indicates that this change "would codify longstanding SEC and FINRA decisions and other interpretations stating that NASD Conduct Rule 2310 covers both recommended securities and investment strategies." The Committee notes that the Notice does not provide any citations to either SEC or FINRA decisions or interpretations, but does reference language that is present in the current Interpretive Material 2310-3 ("IM 2310-3") covering institutional investors (i.e., the mere use of the term "strategy"). The Committee disagrees with the suggestion that the notion of "investment strategy" is well-embedded in IM 2310-3. In this regard, the Committee notes that IM 2310-3 identifies the suitability obligation with respect to a "strategy" in the second paragraph, but then never refers to that term again. In fact, the

remainder of IM 2310-3, in no less than three places, refers solely to transactions and not to strategies.[2]

The Committee has several concerns related to the proposed expansion of the suitability obligation to investment strategies involving securities. The Committee has fundamental concerns about the applicability by FINRA of a "suitability" obligation to anything other than a securities transaction. The suitability requirement historically has been rooted in a broker-dealer's recommendation of a securities transaction, a discrete activity with clear boundaries. In contrast, FINRA's use of the term "investment strategies" does not have clearly articulated boundaries.

Accordingly, if such a standard is adopted for recommendations of investment strategies involving securities, the Committee believes that significant additional guidance must be provided to define the parameters of what constitutes such an "investment strategy." For example, would a dollar-cost-averaging feature in a variable annuity contract be an "investment strategy?"[3] Would an asset re-balancing feature in a variable annuity contract be an investment strategy? Would marketing material of an educational nature advising investors to save for retirement constitute an "investment strategy?" We would urge that such guidance be proposed for industry comment prior to the advancement of this aspect of the rulemaking.

The Committee also believes that member firms have significant experience and tools to use to evaluate, monitor and supervise suitability recommendations with respect to securities transactions. For example, many firms utilize exception reports to detect trends of securities recommendations based on the client's age, income, net worth, etc. The manner in which a member firm would evaluate, monitor and supervise recommendations of "investment strategies" seems unclear. While firms have well-established practices, templates and screens to evaluate specific securities transactions, evaluating a general recommendation of an "investment strategy" involving securities is a very different task. It appears difficult to determine any meaningful way to evaluate whether a particular recommendation to engage in dollar-cost-averaging, for

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[2] IM 2310-3 refers to recommendations and suitability obligations without referring to "strategies" as follows:

(1) "While it is difficult to define in advance the scope of a member's suitability obligation with respect to a specific institutional customer *transaction* recommended by a member . . ." ;

(2) "Members are reminded that these factors are merely guidelines which will be utilized to determine whether a member firm has fulfilled its suitability obligation with respect to a specific institutional customer *transaction* . . .";

(3) "Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular member/customer relationship, assessed in the context of a particular *transaction*."

[3] Because the Committee's focus is annuity-related issues, the examples we provide relate to common practices in the variable annuities marketplace. There are clearly many additional interpretive issues raised with other securities products offered by member firms relating to what constitutes an "investment strategy."

example, was appropriate in a given fact situation, and it seems even less clear how a firm would supervise that aspect of the offer and sale of a variable annuity contract. In addition, the resources required to create the systems, workflow and documentation required to supervise recommended investment strategies in a comprehensive and systematic way would be substantial.

In sum, the Committee believes that the proposal to require a suitability review of recommended "investment strategies" involving securities should not be advanced because it is not consistent with the well-established broker-dealer regulatory framework with respect to suitability, which focuses on a broker-dealer's recommendation of securities transactions. If FINRA determines to move forward with the proposal to include "investment strategies" in Rule 2111, the Committee urges FINRA to provide more guidance on: (1) what would be deemed to be an investment strategy in securities; (2) what type of suitability review process should be implemented for recommendations of investment strategies in securities; and (3) what type of monitoring and supervision might be appropriate to oversee recommendations of investment strategies in securities. Finally, the Committee believes that common features of a variable annuity contract such as dollar-cost-averaging and asset re-balancing should be excluded from the term "investment strategy."

Use of Information Known by the Member or an Associated Person. Rule 2111 would expand the universe of information that must be considered by the member firm in making a recommendation to a customer. Under NASD Conduct Rule 2310, the member firm must assess only that information that is "disclosed by such customer," and FINRA expands that requirement in Rule 2111 to require an assessment of such information and any "facts known by the member or associated person."[4] The Committee is concerned that this requirement is overly broad and could lead to liability for firms for information that is not reasonably available to the firm. More importantly, the Committee believes that some of the objectivity of the suitability review process is lost, and less appropriate recommendations could be made, if representatives and firms are compelled to rely on "facts known by the member or associated person." For example, based on certain non-objective criteria "known by" an associated person about a client (e.g., cars, jewelry, residence), the client could appear to be financially fit, while in reality such client could have a precarious financial position due to being heavily extended.

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[4] The Committee assumes that: (1) the term "associated person" as used under Rule 2111 would not be deemed to include any affiliated companies of the member firm consistent with the definition of that term under the NASD Bylaws; and (2) the proposal under Rule 2111 does not extend to the information of **any** associated person, but only the associated person who is making the recommendation. If those assumption are not accurate, the Committee believes Rule 2111 would be far too broad.

The Committee is also concerned about the member firm's possible responsibility to determine whether a client was a former client of the firm. If that is the case, is the firm required to review any available records related to that individual during their time as a former client in making the current suitability determination? In addition, the Committee is concerned about a registered representative who has a personal friendship or relationship with a client being compelled to use information obtained in the course of that relationship during the suitability assessment. For example, if a registered representative knows that a client engages in risky hobbies (e.g., mountain climbing, sky-diving) or has personal problems, do they need to consider that information in an assessment of whether a particular recommendation of a security is suitable? What is the appropriate way to assess such information? Do the "personal" factors identified above counsel towards recommending more conservative investments? The Committee believes that neither FINRA, nor member firms, should require representatives to make judgments based on such difficult to quantify personal criteria.

The Committee has further concerns about the manner in which such "facts known" would need to be documented, verified and maintained. Moreover, it would create significant burdens on firms if they would now be required to change their client recordkeeping structures to provide for an additional category of information – "facts known" about each client.

In sum, the Committee believes that imputing all the knowledge of the member firm and its associated persons to a particular client's suitability review does not necessarily improve the suitability review process, and is overly broad. The Committee recommends that Rule 2111 adopt the standard under NASD Conduct Rule 2310 of requiring members to assess only the information disclosed by the client. In the alternative, the Committee believes that if FINRA adopts the requirement to base recommendations on all facts known, there are several modifications that could address some of the critical issues raised above. For example, FINRA could: (1) provide that the requirement to assess any "facts known" in a suitability review is subject to some limited time horizon from which such facts are gleaned; (2) limit the information to be assessed to that related to the firm's, or associated person's, business relationship with the client with respect to the recommendation; and (3) provide guidance on, and limit the duties of the firm, with respect to information about former clients.

Applying Rule 2111 to Non-Securities Product Recommendations. The Notice requests comment on whether Rule 2111 should be applied to non-securities product recommendations. The Committee recommends strongly that Rule 2111 should not be applied to recommendations of non-securities products. The Committee believes that FINRA should focus on its primary charge of regulating the securities activities of member firms. FINRA has no experience or standards to apply in the context of non-securities product recommendations. In addition, the other products that might be recommended by a firm (e.g., fixed life insurance or annuity products, banking or lending products) will in many cases be subject to other robust state and/or federal regulatory regimes. Therefore, the potential for overlapping, redundant, or even

conflicting requirements is a significant concern to Committee members. The Committee believes that rules-based regulation of non-securities business activities would represent a dramatic departure from FINRA's regulation in the past, and potentially could be beyond the authorized scope of FINRA's mandate.

If FINRA determines that it has the authority to regulate the non-securities activities of its member firms and chooses to devote the resources to do so, the Committee recommends that FINRA take a more methodical and deliberative approach to ensure a thorough review of the impact and practicality of such non-securities regulation. The recent FINRA efforts to discuss these ideas in the context of isolated rule proposals[5] during the consolidated rulebook process appear to ignore the real import of such changes, and worse yet, could lead to fragmented and impractical requirements that both FINRA, and member firms, cannot review and oversee in an effective manner. The Committee believes that any initiative by FINRA to regulate the non-securities activities of a member firm should be undertaken, if at all, on a comprehensive basis that focuses on all the current rules and also explores what additional rules may be justified.

PROPOSED FINRA RULE 2090 – KNOW YOUR CUSTOMER

FINRA has proposed Rule 2090, modeled after NYSE Rule 405(1), to impose certain KYC obligations on FINRA firms. While Rule 2090 borrows heavily from Rule 405(1), it does impose an additional obligation on member firms to meet the standards of the rule "in regard to the . . . **maintenance** of every account" (emphasis added).

KYC Obligations Are Duplicative of Other Existing and Proposed Rules. As a preliminary matter, the Committee notes that the KYC obligations appear to be duplicative of a number of other requirements imposed under existing NASD and proposed FINRA rules. For example, there are requirements to verify the identity of the client (under NASD Rule 3011) and to keep certain client account information (under NASD Rule 3110); and proposed Rule 2111 would create an obligation to obtain certain customer-specific information. In addition, the SEC's rules related to broker-dealers impose requirements on firms with respect to maintaining and updating client information under Rule 17a-3(a)(17) of the Securities Exchange Act of 1934. The Committee believes that, at a minimum, FINRA should attempt to clarify how the information required to be reviewed and maintained for purposes of Rule 2090 differs from the requirements identified above. Moreover, the Committee suggests that FINRA reconsider whether Rule 2090, practically speaking, would provide any additional benefit to customers, or supervisory tools to members, beyond what currently is, or would be, provided under other rules.

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[5] *See also* Regulatory Notice 08-24 (proposing that member firms must assign a registered principal to be responsible for non-securities related business activities under the new FINRA rule focusing on supervision).

KYC During the "Maintenance" of an Account. The Committee is concerned that the KYC obligations as revised provide an ongoing oversight requirement with respect to all customer accounts, regardless of the activity of the account. As with the proposal to assess suitability for "investment strategies," the Committee believes that this standard is vague and, as such, would lead to inappropriate second-guessing by FINRA examiners. The Committee recommends that FINRA consider revising the rule to eliminate or limit the KYC obligations with respect to the maintenance of an account in a manner that is consistent with the historical obligations that have been imposed on a broker-dealer (e.g., account activity could trigger duties, but the mere passage of time, or status as a client, would not.)

If FINRA determines to require the KYC obligations on an ongoing basis, the Committee believes that FINRA should provide significant additional guidance. For example, FINRA should provide guidance on what an appropriate length of time might be to refresh a KYC determination and confirm the relevant essential facts. In the alternative, FINRA may want to provide guidance to members who want to develop a risk-based review by indicating what factors a member should consider in designing a KYC review schedule (e.g., customer profile, types of securities held, account activity).

The Definition of "Essential Facts." The Committee believes that more guidance is necessary with respect to a firm's obligation to know the "essential facts" related to a customer. While SM. 01 under proposed FINRA Rule 2090 indicates that firms must know the "financial profile" of the customer, that term is not defined.[6] The Committee recommends that FINRA provide additional guidance as to what might comprise a customer's "financial profile."

CONCLUSION

The Committee appreciates the opportunity to comment on the Suitability and KYC obligations proposed under FINRA's consolidated rulebook project. The Committee wishes to reiterate that it believes any efforts to expand FINRA's oversight of the non-securities related activities of member firms should only be conducted in a comprehensive and deliberative manner that seeks to avoid any unintended consequences and allow for an integrated and complete consideration of the issues faced by both FINRA and member firms of any such proposals.

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[6] The Committee does not request any guidance on the terms "investment objectives or policy."

Please do not hesitate to contact Cliff Kirsch (212.389.5055) or Eric Arnold (202.383.0741) if you have any questions.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford Kirsch (DGT)

BY: Eric Arnold (DGT)

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company

From: victor.kirsch@axa-advisors.com [mailto:victor.kirsch@axa-advisors.com]
Sent: Tuesday, June 23, 2009 10:20 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Victor W. Kirsch
966 Nine Mile Cove East
Hopkins, MN 55343-7724

June 23, 2009

FINRA - Financial Industry Regulatory Authority:

As a fully licensed rep, I object to FINRA's attempt to expand control over non security products with with suitability rules. Fixed life insurance and disability, including long term care, are outside the scope of their charter.

We are already under the watchful eye of every state we do business in.

Finally, congress is currently debating hugh changes in regulatory activity. Let's see what happends there before any changes are made/

Thanks for listening.

Sincerely,

Victor W. Kirsch
612 243 3256

June 29, 2009

James S. Wrona
Associate Vice President and Associate General Counsel
Office of the General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006

RE: Public Comment on Regulatory Notice 09-25, Proposed Consolidated FINRA Rules Governing Suitability and "Know Your Customer" Obligations

Dear Mr. Wrona:

I am submitting these public comments as the Editor of Investment Literacy.com. I am not a Registered Person - my website is a Blog aggregating information on Individual Investor Education, Consumer Protections and Self-Advocacy. I do not sell any investment-related products or services at this time.

My work centers on gathering content relating to the experiences that Individual Investors have working with FINRA members. My target audience is the same Retail mass market that commission-based sellers of investment products target. I started investing in the Securities Markets in 1985 and I was a Registered Representative from 1992 to 2005. I have a BA, MBA and serve as an Adjunct Professor in Finance at two Universities in Northern New Jersey. All of my NASD Series designations have lapsed.

After personally analyzing the "real-world" experiences of thousands of Retail clients during the last 17 years, I decided to start my Blog as an information clearinghouse to promote awareness of existing Investor Protections – such as Weblinks to FINRA, the SEC and State Regulators – and to illuminate wide-spread cultural practices that are well-known to employees of FINRA-member firms, but generally unknown to Public Customers. It is important for FINRA leaders to periodically remember that many of the interpersonal interactions between Public Customers and Associated Persons are actually based on learned cultural behaviors endemic to the US securities industry – behaviors that can be modified through positive incentives and negative reinforcements.

With that background introduction in mind, below are my comments on FINRA's Proposed Consolidated Rules pertaining to Suitability and Know Your Customer (KYC) from the perspective of a typical Public Customer. Here are my principal conclusions, with the supportive details following:

1. The language and terminology used in the personal responses given by the Public Customer during the Associated Person's Suitability/KYC interviews do not have the same literal meanings for the two parties – the average retail client often

expresses himself/herself using words and in a style that is misinterpreted and/or not fully absorbed by the Associated Person. This communication breakdown leads to many negative outcomes, unforeseen by the customer;

2. The integrity of the Sales Effort of the Associated Person is compromised by the fact that it's impossible for the Registered Representative to finitely and determinately understand every individual security and every component security embedded in the packaged investment products, such as Mutual funds or ETFs, most commonly recommended by the FIMRA-member firms. This condition becomes relevant to the Fair Dealing clause because the Associated Person often makes a Sales Presentation giving definitions of financial risks that are not technically true based on the fundamental risks of the individual securities involved. For example, an Associated Person may operate under the belief that a Corporate or Municipal Fixed-Income Mutual Fund has "little or no risk" because there are 250 different Notes and Bonds in the Portfolio, so the risk is diversified. But if all Notes and Bonds of all US issuers lose their value simultaneously because of systemic risks, lack of demand and/or change in investment dynamics, then the entire portfolio of 250 issuers loses value. 10,000 bonds may decline, making the concept of protecting principal through diversification meaningless! Human Beings often make flawed decisions because of biases, specious logic and simple lack of understanding – so the Know Your Customer Doctrine must be widened to the Customer Must Know Your Broker.

3. In order to protect the investment principal of Retail investors, and to guard Public Customers from Associated Persons who incorporate non-Scientific beliefs in their Modus Operandi, FINRA needs to devise a Standardized Classification System of all Securities that labels Risk Objectively, not subjectively. It would be similar to Standardized Classification Systems used in the USA for chemicals, foodstuffs and drugs – the manufacturers are not allowed to label their products any way they want – everything is accurately labeled based on its chemical structure and ingredients. Thus, a Public Customer who states "I don't want to lose money" could only buy Investment Products that have been labeled and classified by FINRA that the Investment Principal is NOT at risk. This protects the customer from a well-meaning but simply ignorant Associated Person who subjectively declares "it's impossible to lose money long-term when you are diversified" WHEN IT IS VERY POSSIBLE that the Public Customer's monies are not safe.

1) How Suitability, Know Your Customer, "Reasonable Basis" and Sales Practices are impacted by Misinterpreting and Incorrectly Processing the Client's Language

FINRA regulators need to step out of their own profiles of highly intelligent accomplished professionals with high functionality and high skills, and put themselves in the mindset of the Public customer. The retail client has a completely different mindset than the Professional Investment Advisor. This distinction is important because when the

Associated Person is recording the responses of during the KYC interviews, the responses are processed in the context of the world of financial jargon, dozens of asset classes, hundreds of investment managers and over 12,000 marketable securities which could be purchased on any give day. The Associated Person has become desensitized to the heightened anxiety that the new investor has to losing/risking principal.

Unfortunately this insensitivity is manifested by an absence of empathy and the desire to "train" the novice into "learning" how to lose principal, even if this is not the stated Investment Objective/Goal of the customer. It's like, "I'm going to teach you to jump from this plane with a parachute, and you are going to like it"...more aggressive in style than the average American.

When conflicts arise between Member Firms and Public Customers, it's often because the Registered Representative didn't genuinely absorb or comprehend what the unsophisticated person meant when he/she said "**I want Conservative investments where I can't lose money".**

In written and oral statements submitted in Arbitration and Mediation cases, the Client asserted that the Member firm did NOT honor the request to be "Conservative" and "Safe", which means DO NOT RISK THE INITIAL DEPOSIT or Investment Principal. In the practical reality of American English, these words Conservative and Safe are the most-commonly used expressions that Retail clients utilize to convey they don't want volatility in the portfolio.

I am recommending to the Regulatory leadership of FINRA that Proposed Rules designed to protect the Retirement Savings of U.S. investors **must incorporate concrete language that powerfully communicates to the Retail Client in COLD, STARK terms the chances of losing money**. Many Suitability/KYC interviews yield undesired outcomes, with the Public Customer claiming later on in Mediation/Arbitration cases "I didn't know I could lose so much" and "I didn't understand that the investment he/she recommended contained so much risk to principal".

I would like to see new terminology and descriptive words introduced to the Suitability and KYC information-gathering process **that most accurately defines the OPPOSITE of "safe" and "Conservative".** If the Associated Person is recommending a Marketable Security or Packaged Investment Product that can lose value, it should be described as **"Unsafe" or "Non-conservative" or "Unpredictable"**, so the language really has meaning to the novice retail customer.

The nuance of American English is funny – all of us have the ability to glean different meanings based on the exact phrase employed. Since the majority of US Equities, Corporate Fixed-Income Securities and High-Yield Municipal Bond Funds and ETF's have lost their principal value over the last 1-3-5-7 and 10 year holding periods, the authentic words to convey the Risk of losing principal is actually **perilous, dangerous and hazardous. The language must be "non-legalistic" in nature to have impact.**

2. The language mandating that an Associated Person (AP) must have *"a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the facts known, et al"* is sound and logical language Prima Facie.

The real-world problem for the Public Customer is when the Associated Person is pitching an investment recommendation in the client's kitchen or living room, the legalistic Regulatory language in the FINRA manual is lost. The operating energy deployed by the AP in that given moment is the personal passion he/she believes about the purposeful nature of investing in securities. **The big problem: it CANNOT be scientifically proven that the purchase will be profitable**. The AP is also not recommending the investment securities for recreational purposes, but to earn commission dollars to increase personal income.

FINRA needs to consider that the AP/Registered Representative does not have adequate Academic training and on-site resources to ensure that the personal Suitability/KYC information disclosed by the client is matched with commensurate Investment Products that provide a good fit for the Client's Profile. The concept of Behavioral Theory or Behavioral Economics stipulates that ALL humans make flawed decisions based on internal biases and unscientific, heuristic anecdotes that are mis-interpreted to prove the original premise.

There are 650,000 Registered Representatives in the US – they don't represent a random sampling of the population at large. They represent a positive self-selection of personalities that have the cognitive aptitudes necessary to passionately solicit investors by Persuasive Arguing. They are determined in their mission to prove the merits of their arguments – this leads them to have a bias of being "right", i.e. winning, at all costs.

This personality bias towards winning the investment purchase argument leads to oversimplification – during the kitchen table debate - of the very complex Marketable Securities in the portfolios that are being recommended. The economic dynamics are intertwined and convoluted and it's problematic for the Average AP to explain – as it's problematic for the average customer to comprehend. **Therefore, the Suitability rules are superseded by the AP touting securities on the basis of misrepresentation – not motivated by bad intentions, but out of pure ignorance and biased objectives.**

3) I have a solution for the organic problem that FINRA faces: how can 650,000 individual Financial Advisors in the USA competently understand 12,000 complicated and volatile Investment Products that could be sold to the public, resulting in a million different Portfolio possibilities?

The answer is to protect the Member firms and Associated Persons from themselves, i.e. as human beings who can easily make mistakes. All securities that could be legally sold to Public Customers would have to be formally classified, designated by the dangers of losing money.

Once the AP has a reasonable basis to believe that the customer DOES NOT WANT TO LOSE MONEY, he/she could ONLY make investment recommendations from the category of Low Volatility/Low Risk to Principal. The Member Firm and the Client would negotiate and agree to – IN WRITING – the percentage of Classified Assets in each risk category, i.e. 70% Low Risk, 30% Not Safe.

This plain language and easy-to-understand system of choosing assets by being limited to a Suitability Grid would serve the interests of the Investment Management community, who would improve the quality of client portfolios, as well as improve the experience of Public Customers, who would stay with each firm longer and would not suffer devastating and unplanned losses of capital. It adds practical meaning and value to the Know Your Customer concept: instead of having a vague connection there would be a concrete action plan that could be implemented by the FINRA member firm.

This system also provides a built-in protection mechanism and support for individuals who don't have the aptitude or formal educational training to understand dense financial information written in unfamiliar language. Since the primary objective of the Suitability concept is to match the appropriate investment with the stated objective/personal status of the client, I envision everyone benefiting from a Securities Classification System. It would also expedite the Conflict Resolution process because there would be a model to follow to adjudicate Client Complaints.

Thank you for allowing me to comment as a private citizen who spends 40-50 hours per week thinking about methods to improve the experiences of Individual Investors in the landscape of the US Financial Services industry.

Most sincerely,

Douglas J. Klein
Editor
www.investmentliteracy.com

Work phone: (201) 424-1762

FARMERS
FINANCIAL SOLUTIONS

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-15061

Re: Comments to FINRA Regulatory Notice 09-25

Dear Ms Asquith,

Farmers Financial Solutions ("FFS") appreciates the opportunity to comment on Regulatory Notice 09-25 ("Notice") and the discussion concerning suitability and know your customer expectations. We support the effort to maintain the highest levels of professional conduct and ethical sales practices.

As a limited broker-dealer of an affiliated insurance group of companies the firm offers mutual funds, college savings plans variable annuities and variable universal life insurance policies through exclusive insurance agents. In addition to sales of securities, these Series 6 registered representatives also sell a variety of property and casualty insurance products, fixed annuities, traditional life insurance. Such agents are independent contractors and may also be engaged in the sale of other insurance products such as health insurance, long term care and disability insurance. These agents are relied upon by their customers to provide products and services that address their insurance and financial needs. They live and work in their communities and typically may develop close ties and a personal understanding of their customer's circumstances.

While the firm supports the stated intent of the Notice to "clarify the information to be gathered and used as part of a suitability analysis." Creating clear, objective, and realistic requirements defining suitability standards and the application of such standards is an important objective. However, we would question whether this proposal meets the stated objectives and otherwise offers a practical approach in addition to the timing of such sweeping changes.

In particular, the firm would like to address the proposed text considering "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." It appears the intent, scope, and implications of this passage warrant further analysis and clarification.

To begin many registered representatives may have personal and business interactions with customers that extend well beyond the broker-dealer relationship. Thus, we would suggest further clarification concerning recommendations "in connection with the firm's business."

For example, would the proposed rule apply if a registered representative recommended or sold a fixed annuity, term life insurance policy, in which the broker-dealer received no remuneration nor had and direct or indirect involvement? Would the broker-dealer assume new requirements if a security were subsequently recommended? Furthermore is the firm required to otherwise supervise such outside business activities beyond the requirements of NASD Rule 3030? These scenarios do not appear addressed by the proposed rule.

In addition, references to 'services and strategies' also necessitate further clarification. For example, would a referral to a tax or legal advisor to settle estate issues constitute a "service or strategy" necessitating suitability obligations and the firm's oversight? Supervising such non-securities activities in which the firm is neither compensated nor involved would obviously pose considerable operational, financial and compliance challenges.

We would also note that the firm is opposed efforts to expand broker-dealer suitability requirements to non security products or services not executed through the firm and clearly beyond the intent of current NASD Rule 3030.

We would also note that the proposed rule raises questions with regard to potential jurisdiction and duplicative oversight. Many of the products and services offered by registered representatives as outside business activities are in fact regulated by states or other federal agencies. Suitability requirements, account forms, applications, and other operational procedures are already established for such products and services. Requiring broker-dealer involvement would add another layer of oversight by those not necessarily familiar with the products or services in question.

We hope the scenarios and questions noted above provide issues to consider concerning the proposed rule. Many FINRA member firms have distinct business models, serving diverse segments of the population and it is important to consider all of the business models and the implications of such changes to such rules. As written, the proposed rule appears impractical and overly burdensome for member firms and their registered representatives and we would ask that further clarification be provided concerning recommendations "in connection with the firm's business...".

Sincerely,

Steve Klein
Chief Compliance Officer
Farmers Financial Solutions, LLC

From: Knickerbocker, Harry [mailto:hknickerbocker@jhnetwork.com]
Sent: Tuesday, June 23, 2009 10:47 AM
To: Comments, Public
Subject: Proposed expanded regulations

It has come to my attention that there is proposed FINRA changes increasing the scope of suitability disclosures to non-registered products. I do not favor such a move as it will add additional confusion to the process of providing for the financial needs of clients. Disclosures are adequately provided for in the current process to show non-securities costs and benefits.

Sincerely,

Harry P. Knickerbocker, III., CLU

Niemann General Agency
700 Cedar Lake Boulevard
Oklahoma City, OK 73114
405-478-7700
fax 405-478-1205
hknickerbocker@jhnetwork.com

From: Ray Kojetin [raykojetin@gmail.com]
Sent: Monday, June 29, 2009 11:08 AM
To: Comments, Public
Subject: FINRA

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. I have been in this business for 22 years.

FINRA does not have legal authority to regulate fixed products. These products are regulated adequately by the State Insurance Departments.

The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

--
Raymond D. Kojetin
Registered Representative
404 24th Ave NE
Great Falls MT 59404
Phone: (406-453-2694
Fax: (406)-771-0217
Securities and Investment Advice Offered Through Capital Financial Service, Inc. Broker/Dealer
Investment Advisor
Member FINRA/SIPC

From: David.Koll@mutualofomaha.com [mailto:David.Koll@mutualofomaha.com]
Sent: Wednesday, June 24, 2009 2:56 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

To whom it may concern,

I am sending this message because I very strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I certainly believe that those who make unsuitable sales and engage in misleading sales practices should be prosecuted and have their licenses revoked. Insurance and other non-securities products are already subject to regulation at the state level by state insurance departments and other state regulators. Adding additional regulation is simply not needed.

I urge you not to expand FINRA's suitability obigations to include recommendations that do not include securities. Thank you very much.

David M. Koll LUTCF
Financial Advisor
Mutual of Omaha
2102 N 117th Ave
Omaha, NE 68164
402-399-9300 ext. 2226

From: John Korzec [mailto:jkorzec@ft.newyorklife.com]
Sent: Tuesday, June 23, 2009 3:59 PM
To: Comments, Public
Subject: Reg. notice 09-25

The amount of forms and information required for non-securities related products is already impeding our efforts to properly insure and help clients save for retirement. A regulation like this would be an additional hurdle for clients to help save for retirement and protect their families. Savings and benefits are already at historical lows. Please keep this in mind as you help us streamline the process instead of impeding it. Sincerely,

John Korzec,CLTC,Partner
New York Life Ins.Co.
800 South St. Suite 600
Waltham, Ma. 02453
781-398-9182

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WILLIAM F. CASH III
(LICENSED ONLY IN OHIO)

OF COUNSEL:
ROBERT F. KENNEDY, JR.
(LICENSED ONLY IN NEW YORK)

BEN W. GORDON, JR.

LEFFERTS L. MABIE, JR. (1925-1996)
D.L. MIDDLEBROOKS (1926-1997)
DAVID H. LEVIN (1928-2002)
STANLEY B. LEVIN (1938-2009)

June 29, 2009

VIA EMAIL @ pubcom@finra.org
Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 09-25

Dear Ms. Asquith:

The purpose of this correspondence is to comment on FINRA's Regulatory Notice 09-25, which proposes consolidating FINRA's Suitability Rule with NYSE's Know Your Customer Rule. Levin Papantonio focuses its practice representing both retail and institutional investors who have been harmed by the misconduct of the securities industry ("Industry"). We are encouraged by FINRA's efforts to clarify Industry suitability obligations, and have taken this opportunity to not only show our support for a portion of the proposed revisions, but also to recommend additional changes that will promote investor protection and close significant gaps in the regulatory structure.

We strongly agree with the provisions of Rule 2111(a), which would require registered representatives to not only have a reasonable basis for "any recommended transaction," but include "investment strategies" as well. In addition, the proposed rule broadens the current information gathering process to now require the Industry to make reasonable efforts to obtain information regarding the "customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon liquidity needs, risk tolerance, and any other information the member or associated person considers to be reasonable in making recommendations." This is an important and long overdue improvement that more accurately reflects an appropriate pre-recommendation analysis.

The recognition that the proposed Suitability Rule includes recommended investment strategies is also a very important improvement. The incorporation of investment strategies more accurately reflects the current relationship of many broker-dealers with their clients. Many of our clients do not go to their broker-dealer to place an order. Rather, they predominately seek advice on how to invest their life savings given their current employment status and need for income.

The Suitability Rule, however, fails to define what a recommendation is. For years the Industry has contended that a recommendation should be interpreted narrowly and only cover a buy or a sale. The fact that the proposed Suitability Rule does not capitalize on an opportunity to incorporate a recommendation to hold nor does it confirm that a suitability analysis includes a duty to review and approve a portfolio when it is "accepted" at a new broker-dealer. These two fact scenarios are common defenses used by the Industry. The problem, however, is that no one from the Industry typically explains to the investor that a recommendation to hold or a request for an investor to follows his/her registered representative to a new broker-dealer when a recommendation to hold is made that this type of advice falls outside the suitability requirements.

FINRA now has an opportunity to define what constitutes a recommendation in a way that provides additional protection for investors. Although the proposal is a step in the right direction, it does not go far enough to include the foregoing examples. We propose that a "recommendation" be defined to include the foregoing examples. Failing to define what constitutes a recommendation creates a significant gap in investor protection that could easily be closed.

The proposed rule changes would mistakenly allow institutional customers the option to forego suitability protection. Our firm represents many institutional investors. Although the definition of institutional client includes banks, insurance companies, and investment advisors, it also includes accounts which have assets of at least 50 million. As opposed to common belief, these types of investors are in need of FINRA's protection and not commonly as sophisticated as the member of the Industry they consistently rely on. Instead, institutional investors rely heavily on investment advice to meet their needs. Reducing protection for investors of any type, let alone investors who frequently manage large portfolios, is not a wise course of action. If we have learned anything from the unregulated world of structured finance it is that "self-regulation" is not consistently a wise choice. Institutional investors should not be able to waive suitability requirements any more than an off duty peace officer should be able to waive the protection of the police force. Institutional investors are frequently the recipients of inappropriate financial advice. If anything, because of the size of the funds managed by these investors, reducing or removing protection will invite additional problems and some may be the size and scope that will be difficult to manage the ramifications. There is no legitimate reason to reduce institutional client protection that outweighs the potential problems.

Included in FINRA's Regulatory Notice 09-25 is an invitation to comment on whether suitability obligations should include all investment recommendations of investment products, services and strategies made in connection with the firm's business. We support the expansion to cover all investment recommendations. Many firms market financial products that are not defined as securities. Investors, however, are often not sophisticated to understand that a complex financial product is not a security and the financial institution they are dealing with may have a lower standard of care because they are selling one product over another. Instead, many investment firms hold themselves out to their customers and the public as entities which offer solutions to their customers' financial needs. The Industry should not be allowed to market products that may be unsuitable for its securities customers and avoid liability because the products fall outside what is covered by the Suitability Rule.

We appreciate the opportunity to comment on FINRA Regulatory Notice 09-25. We are hopeful that the proposed revisions set forth in this letter will be implemented into the Rules and submitted to the SEC.

Respectfully,

Peter J. Mougey, Esq.

Kristian P. Kraszewski, Esq.

PJM/KPK/mll

From: Barbara Kreifels [bkreifels@ft.nyl.com]
Sent: Friday, June 26, 2009 3:58 PM
To: Comments, Public
Subject: Regulatory Notice 09-25 (expansion of suitability obligations that do not involve securities

Importance: High

To Whom It May Concern:

As a Licensed Insurance Professional and Registered Representative I strongly object to expanding FINRA'S suitability obligations to recommendations that do NOT involve securities. I do believe that those people who promote unsuitable sales and misleading sales practices should be prosecuted and sanctioned severely based on the case. Unfortunately, those who do this, give the industry as a whole a bad name even when you are dealing with a small percentage of unethical people. My company takes a tough stance with these regulations already as well as our State Regulators. By having another level of oversight can become even more confusing and conflicting as to what the regulatory requirements might be, and thus detract from the real goal of consumer protection. You should not rush in to make changes until all debates are completed between our policymakers, the Administration, the SEC, FINRA and the private sector. Too many policies have already been rushed into without the proper thought and discussions and then we all pay for the wrong type of regulations that are put into place.

Thank you for your consideration is this very IMPORTANT matter.

Sincerely,

Barb Kreifels

Barbara L. Kreifels

Financial Services Professional

Agent, New York Life Insurance Company

Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC)

770 North Cotner Blvd., #315

Lincoln, NE 68505

Phone: 402-466-6323

Fax: 402-466-7017

From: James Kruzan [James.Kruzan@RaymondJames.com]
Sent: Monday, June 29, 2009 6:29 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

RAYMOND JAMES®

Dear Ms. Asquith,

As a registered representative and a registered investment advisor representative with 26 years of practical experience, I oppose the proposed rule changes governing suitablity and know-your-customer obligations.
Simply put, the Proposed Rule's requirements are of a concern for three important reasons...

First, by expanding the suitability criteria, the Proposed Rule greatly expands the opportunities for regulators and the like to second guess a financial advisor's recommendations with the benefit of hindsight.

Second, the investment time horizon, liquidity needs, and risk tolerance are criteria best judged from an examination of the client's overall investment portfolio. That being said, the Proposed Rule would require the suitability of each recommended transaction to be determined under these new suitability criteria, potentially without appropriate context. This may not be in the client's best interest as it goes against modern portfolio theory and the concept of diversification. Currently, assets are chosen based on how the individual investment reacts to and with other assets within a portfolio. Studies have shown that 2 assets , both with high relative volatility, can be combined to produce a portfolio with, in fact, lower risk characteristics (and better performance) than those inherent of the two individual items. Individual investors would lose the benefits of diversification and suffer potentially lower returns if each asset would need to stand on it's own merit (absense of context) . Interestingly, I suspect many of the institutional strategies used by some of our countries largest universities and pensions to outperform the markets and reduce risk wouldn't have been able to be used it their investment committees were subject to the same one-off review.

Finally, the Proposed Rule's requirement that recommendations be based on information about the client known to the broker-dealer or associated person would appear to require a transaction-by-transaction review of all customer databases, files, forms, and records of the firm and its affililiated financial advisors for information potentially relevant to the suitability determination. This requirement is both unworkable and unreasonable.

In conclusion, the Proposed Rule is premature in light of the ongoing debate about the appropriate standard of care owed by a financial advisor to a client. It is unclear how these issues will be resolved by Congress and other policymakers. Therefore, I believe it would be prudent for FINRA to shelve the Proposed Rule while awaiting the outcome of the other policy debates.

Sincerely,

James B. Kruzan

James B. Kruzan, CFP | Branch Manager
Raymond James Financial Services, Inc.
Member FINRA/SIPC

329 W. Silver Lake Rd. | Fenton, MI 48430
(810) 593-1624 • (800) 638-6900
(810) 593-1643 Fax
james.kruzan@raymondjames.com

If you would like to execute a trade or if you have time-sensitive information for me, please call my office at (810) 593-1624, (248) 625-2993 or (800) 638-6900.

From: Jerry Kuhlmann [mailto:Jerry.Kuhlmann@fbfs.com]
Sent: Tuesday, June 23, 2009 12:32 PM
To: Comments, Public
Subject: not secruity related

Finra should stay completely out of areas that are not security related. This is only common sense.

From: Bob Lafaro [blafaro@manlafins.com]
Sent: Thursday, June 25, 2009 2:41 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements.

Thank you,

Robert J. Lafaro, CIC, LUTCF
Mantsch-Lafaro Insurance Agency
4627 Peach Street
Erie, PA 16509
Phone: (814)866-5528
Fax: (814)866-5730
www.manlafins.com

Christopher P. Laia
Vice-President
FASG
General Counsel
(210) 498-4103

June 29, 2009

VIA Email
Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-25 - Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith,

On behalf of United Services Automobile Association (USAA), I am writing to provide comments on FINRA's Regulatory Notice 09-25 "Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations", and proposed Rule 2111.

USAA is a member-owned association that seeks to facilitate the financial security of its members and their families by providing a full range of highly competitive financial products and services, including insurance, banking and investment products. USAA members are part of the American military community, and include present and former commissioned and noncommissioned officers, enlisted personnel, and their families.

FINRA proposes to expand member firms' suitability obligations to cover both recommended securities and investment strategies involving a security or securities. FINRA also seeks comment on 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." These could present several difficult challenges to USAA in the fulfillment of its mission.

USAA is concerned with the expansion of the suitability Rule to include investment strategies. USAA's appropriately licensed member service representatives (MSRs) offer financial solutions to its members based upon the member's needs. The terms "investment strategies" and "involving securities" however, are undefined, either in the proposed Rule, interpretative materials, or case law. USAA is concerned that it will be difficult to ascertain the potential scope and application of the proposed Rule to its business. Absent specific guidance from FINRA on the scope and meaning of these terms, the meaning of these terms may only come after the adoption of the Rule through the examination, enforcement and legal proceedings processes. Moreover, many of these same MSRs are licensed as investment adviser representatives in the State of their place of business acting on behalf of SEC registered

investment advisers. Attempting to extend jurisdiction to activities clearly falling under SEC jurisdiction would create duplicity and confusion.

USAA is concerned particularly with the concept of expanding the suitability requirement to all investment services and strategies "regardless of whether the recommendation involves securities." As noted previously, MSRs may be licensed to offer both securities and non-securities related financial products and services to our members. Currently, the regulatory oversight of USAA's business is reasonably well defined, so that USAA can supervise MSR's securities activities according to applicable SEC and FINRA rules, and supervise banking and insurance related activities according to applicable federal and state law, respectively. If the FINRA approach were to be adopted, these activities would now also be subject to additional and potentially conflicting FINRA requirements. USAA respectfully suggests that expanding a member's suitability obligation in this manner would result in a significant expansion of FINRA's jurisdiction into subject matter areas traditionally regulated by other bodies, and any expansion of FINRA's jurisdiction should not be attempted through the Rulebook consolidation process.

Please feel free to contact the undersigned if you have any questions or require further information regarding our comments.

Sincerely,

Christopher P. Laia

Christopher P. Laia
Vice-President and General Counsel
Financial Advice and Solutions Group

From: Allen Lakner [allen@lambfinancialservices.com]
Sent: Tuesday, June 23, 2009 10:14 AM
To: Comments, Public
Subject: Oppose the expansion of FINRA's suitability obligations

Dear Sir/Madam:

I am writing to express my opposition to the expansion of FINRA's suitability obligations. As a licensed insurance professional working in an office with a registered representative, I am well aware of the level of conduct required by my occupation. Expanding FINRA's oversight role into non-security products is a gross misuse of their authority.

There is more than sufficient regulation for insurance and other non-securities products at the state level. I believe that these laws, when violated by unscrupulous individuals, should be prosecuted to the fullest extent. However, the application of FINRA rules could result in conflicting and confusing regulatory requirements, and will ultimately detract from the goal of consumer protection. My job is to do the best for my client, not be a lap dog to a watch dog agency with the client as a secondary concern.

For these reasons I urge you to oppose the expansion of FINRA's suitability obligations to recommendations that do not involve securities. Thank you for your consideration.

Allen Lakner.

From: Landon, James [mailto:jim@argofa.com]
Sent: Thursday, June 25, 2009 12:52 PM
To: Comments, Public
Cc: Vicky@argofa.com
Subject: Opposition to Expansion of Suitability Obligations to Recommendations that do NOT involve securities.

I am a licensed insurance professional and registered representative. I am writing to you to strongly object to expanding FINRA's suitability obligations to recommendations that do NOT involve securities. It is my belief that individuals who use misleading sales practices, and promote unsuitable products should be punished to the fullest extent of the law. However, FINRA does NOT have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. Again, FINRA's authority should NOT be expanded to include non-securities products and services.

From: Terri Landry [mailto:terri.landry.b23x@statefarm.com]
Sent: Thursday, July 02, 2009 5:30 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

While I am a licensed life/health/property casualty insurer, I am also a registered representative. I want you to know that I strongly object to expanding FINRA's suitability obligations to recommendations that do NOT involve securities. I applaud your effort to consolidate and streamline; however, this action has several readily visible flaws:

(1) FINRA DOE NOT have jurisdiction over products and services which are NOT securities. Neither FINRA nor

Broker-dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

(2) Insurance and other non-securities products are already subject to comprehensive regulation at the state level. The

Application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which

Will detract from the goal of consumer protection!

(3) Currently issues are being debated concerning the standard of care which broker/dealers and investment advisors owe to their

Clients by policymakers on Capitol Hill, the Administrations, the SEC and FINRA. It would not be appropriate for FINRA to expand or revise current requirements while this debate is underway!

For these reasons, Ms. Acquith, I urge you to NOT EXPAND FINRA's SUITABILITY OBLIGATIONS to include recommendations that do not involve securities.

Thank you for taking the time to read and listen..

Terri Landry, Agent
State Farm
2655 Veterans Memorial Dr
Abbeville, LA 70510
337-893-9122
Fax: 337-893-0719
www.terrilandry.com

From: R. Mike Latta [mailto:mlatta@intrusco.com]
Sent: Friday, June 26, 2009 11:28 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

To whom it may concern: as a member of FINRA, I strongly oppose any new regulations for suitability rules with regards to non-security services and products in my practice. I would prefer FINRA to do a better job with current regulations for securities. Thank you, MIke Latta, Fort Worth, Texas

From: John Lawler [mailto:mcgreevyassociat@qwestoffice.net]
Sent: Tuesday, June 23, 2009 12:59 PM
To: Comments, Public
Subject: Expanding Suitability Obligations

To Whom It May Concern:

I am sending this email to urge you not to expand FINRA's scope of regulatory power. FINRA was established to help control the securities industry and make sure investors were being offered investments that were suitable with their risk tolerance and time frame for investing. FINRA doesn't have jurisdiction over products and services which are not securities and they do not need it. There are state regulators that monitor non-securities products and therefore we do not need another governing body involved. This could potentially cause conflicting regulatory requirements and we do not need that within our industry. Every industry has unethical people working within it and ours is no different, however for non-security products our state regulators do a very good job of controlling the suitability of the sale of these products.

As a licensed insurance professional and registered representative I ask you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for your time.

John Lawler, LUTCF
McGreevy & Associates
3500 S Kiwanis Ave, Ste 101
Sioux Falls, SD 57105
605-332-4111
mcgreevyassociat@qwestoffice.net

From: dirk.lawson@nmfn.com [mailto:dirk.lawson@nmfn.com]
Sent: Tuesday, June 23, 2009 2:08 PM
To: Comments, Public
Subject: Comments regarding FINRA's proposed regulations

To Whom It May Concern:

As a business owner, who is also a licensed insurance professional and a registered securities representative, I simply ask that before implementing any regulations that you ask yourself the following questions:

1. What is the concern or problem we want to address?

2. Does this proposed language or regulation help us to address our concern or problem?

3. Does this proposed regulation provide any value – what is the value add?

If your proposed language or regulation is addressing an issue that has negatively impacted the public, our clients, or our trust and reputation, and the language in the regulation is drafted with precise and concise words, and that proposed regulation is a value add – or provides a value or benefit to the public, our clients, rebuilding our trust or reputation – then I support such proposed regulations. But if the answer to either question # 2 or #3 is "No," then I oppose such proposed regulations.

As of now, I oppose FINRA's expanding its suitability obligations to recommendations that do not involve securities because I do not know the answer to the 3 questions above, as to what the concern is that this expansion would address, nor do I know that the language was skillfully crafted to address the concern, and that this proposed expansion would provide any value. I would appreciate any insight or information that you could provide regarding this proposed expansion, and answering the 3 questions posed above, which this expansion would address. I do welcome the opportunity to have FINRA regulate the insurance industry, if that means there is no state regulation, and if insurance was regulated like securities – one national regulator, with the requirement to be registered with each state you want to conduct business in.

Thank you for your time and consideration.

Dirk Lawson

Dirk P. C. Lawson, JD

Financial Representative

Northwestern Mutual Financial Network

2600 Grand Boulevard, Suite 600

Kansas City, Missouri 64108

816-260-3012 mobile

816-412-1568 direct

816-412-1525 fax

dirk.lawson@nmfn.com

720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Layne, Jeffrey [mailto:jlayne@jhnetwork.com]
Sent: Tuesday, June 23, 2009 3:26 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

PLEASE FORWARD TO MS. MARCIA ASQUITH

Ms. Asquith,

Broadening FINRA's net? I have reviewed the notice proposing expanding the scope of FINRA and found language that is very disturbing to me as a 20-year veteran of the Financial Service Industry. The stated purpose of this effort is to protect investors. Unfortunately, when taken to its natural extreme, this Regulation would do more harm than its intended good and increase the cost and complexity already found in our industry and its products. Instead of being merely a critic, I would like to offer an alternate solution.

There are already existing agencies and policies in place to accomplish what this *new layer* of oversight seeks to implement. Also, the new regulation would require at its extreme, for unregistered persons to be held accountable for products in which they are not trained nor can receive compensation for selling. Is there public outcry for this? Why would FINRA want to overextend itself into areas where it has neither experience nor expertise? The public has seen numerous examples where regulatory bodies have ignored their own sphere of responsibility.

Who was supposed to be monitoring the egregious actions which have disrupted the entire global economy? Fannie Mae and Freddie Mac were supposed to be competent in overseeing real estate. FINRA watched, with the rest of the world, as companies like Enron and WorldCom managed to avoid oversight of their books and records, resulting in millions lost for investors. What was the response to these? A new regulation (Sarbanes-Oxley) was initiated. Didn't we already have policies and agencies for these responsibilities?

Of course who can forget Bernard Madoff? Former "non-executive chairman" of the NASDAQ stock exchange, he reported, supposedly, directly to FINRA! Once again, millions lost of investors' savings. Member Firms such as AIG, Citigroup, Merrill, and Lehman and many more were also supposedly under the watchful eye and jurisdiction of FINRA, but have all lined-up at the Federal Reserve for bailout money stemming from their practices...more lost wealth for investors.

Why should the American investor have confidence in FINRA's ability to oversee any other area of the financial service industry when these examples clearly reveal a breach in FINRA's current fiduciary role? Who oversees the overseer? In **Luke 16:10** (KJV) Jesus states, "He that is faithful in that which is least is faithful also in much: and he that is unjust in the least is unjust also in much." I think that passage can also apply to this situation nicely.

I respect the institution that is FINRA in its daunting task of serving as a "trusted advocate for investors, dedicated to keeping the markets fair, ensuring investor choice, and proactively addressing emerging regulatory issues before they harm investors or the markets" from your website. It is also in your mission to foster education to the investing public. Instead of trying to impose regulations on everyone for the transgressions of a few unethical advisors, why not focus on educating the masses - starting in our school systems?

I do not feel it is possible to regulate to protect against ignorance. With only 4 - 7% of the US population retiring above the official poverty line, the need for financial literacy training is apparent. (Social Security Bulletin, Vol. 65 No. 3, 2003/2004) Regulation will not overcome ignorance - Education will overcome ignorance. If FINRA would chose to focus on its education mission more rigorously, there would be less ignorance to protect against. An educated investor would be less likely to be naïve and succumb to the unscrupulous practices of those practitioners who do not follow the Know Your Customer Rule already woven into our industry.

In closing, I feel FINRA should concentrate its efforts on its existing missions of educating investors and promoting investor confidence. I do not feel it would be the best use of FINRA's limited resources to spread into other areas which already have oversight. Rather, FINRA could encourage policymakers to create and mandate financial literacy as part of the required curriculum to graduate from our taxpayer-funded education system. This would be in the scope of FINRA's authority and mission and help to bring about the type of reform we need.

Jeff Layne, CLU, ChFC
Sales Manager
Capitol Financial Solutions
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Richmond, VA 23233

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Cell: (804)389-2231
Watts:(888)246-6706
Website: www.capitolfinancialsolutions.com

Let's Go Mountaineers!

My name is Royal Lea. I am a lawyer in private practice in San Antonio, Texas. I am on the panel of FINRA public arbitrators, and I sometimes represent public customers in disputes with member firms.

I support the proposed new suitability rule. I think it is a significant improvement over Rule 2310, and I think it is very helpful to have a "know your customer" rule within the FINRA rules.

I do think it is a significant mistake though for the proposed new rule to limit the quantitative suitability obligation only to those situations in which a member or associated person has actual or *de facto* control over a customer's account. This is not logical or fair. Logically, control aside, if a member or associated person makes a series of recommendations that are not suitable because they are quantitatively excessive, they are *recommendations*, so they should be subject to the rule. And if the series of recommended transactions otherwise met objective criteria for unsuitability, why would FINRA or SEC not use quantitative tools to analyze the unsuitability.

From the perspective of fairness, the very same factors that the proposed rule identifies for finding quantitative unsuitability when there is actual or *de facto* control are important factors for deciding whether control exists in the first place. And in practice, when considering *recommended* transactions arbitrators and regulators cannot isolate the significance of turnover or cost-equity ratios for excessiveness from their significance for control.

It is clear that the proposed rule would apply only to recommended transactions. With that foundation, it is a bad idea to limit the application of the proposed rule on quantitative suitability to situations when there is control.

From: Jim Leap [mailto:JLeap@JCLeapInsurance.com]
Sent: Tuesday, June 23, 2009 11:10 AM
To: Comments, Public
Subject: Suitability Obligations

I am a licensed insurance professional. I am writing to you because I strongly oppose expanding FINRA's involvement in regulating non-security products that are currently regulated by the state.
I do firmly believe that those in my industry who promote and sell unsuitable products and mislead the public should be aggressively prosecuted and subject to the current requirements and sanctions of the State Banking and Insurance Dept. FINRA does not and should not have jurisdiction over products and services which are not securities. FINRA as well as the broker/dealers do not have the resources or product-specific expertise necessary to oversee non-security transactions. Non-Securities products are the responsibility of the state regulatory departments. These products are state specific and must remain under the jurisdiction of the state.
Insurance and non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The addition of FINRA rules to these products could and would result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.
It would be inappropriate for FINRA to expand or revise current suitability requirements while it is being debated on Capitol Hill, in the administration, the SEC, FINRA, and the private sector stakeholders.
I believe the best place to regulate non-securities products is at the state level not at the Federal level. FINRA is over reaching and must not usurp the authority of the state by attempting to regulate these products.
As stated above, I urge you not to expand FINRA's authority to involve non-securities products.

I would appreciate your consideration of my views on this issue.

Thank You

Jim Leap
J.C. Leap Insurance Services
700 New Road, Suite 102
Linwood, NJ 08221
(609) 927-9440 ext. 101
Fax: (609) 927-0477
Cell: (609) 335-8154

LEDERMAN FINANCIAL STRATEGIES, LLC

Deborah Lederman, CLTC
Insurance and Investment Services
2817 East 28th Street
Tulsa, OK 74114

918.743.1555 Phone
918.743.1556 Fax

June 25, 2009

Marcia E. Asquith
Office of the Corporate Secretary, FINRA
1735 K Street, NW
Washington, DC 20006

Re: FINRA Regulatory Notice 09-25

Dear Ms. Asquith,

I am a licensed insurance agent and registered representative. It has come to my attention there are recommendations to expand FINRA's suitability obligations in the area of securities. It goes without saying that licensed professionals need to always conduct their business in the most ethical manner; putting the interests of their clients first. There are already regulations in place that allow for this sort of oversight.

FINRA does not have jurisdiction over products and services which are not securities. Neither FINRA or broker/dealers have the resources or product specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

We are already subject to comprehensive regulation at the state level through the state insurance department and other state regulators. It seems to me involving FINRA would result in confusion and would detract from the goal of consumer protection.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for taking the time to read this letter. I can be contacted at (918) 743.1555 should you wish to further discuss this matter.

Yours truly,

Deborah Lederman, CLTC

From: Jim Leggott [mailto:jleggott@aicinvest.com]
Sent: Friday, June 26, 2009 11:12 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

FINRA,

I am a Registered Representative working with securities and insurance products. I am emailing to voice my concerns about FINRA's plan to enlarge the area its suitablility rules will be required. This should NOT, include sales which are not dealing with securities.

Non-securities sales and products are already strongly regulated at the state level. State regulators and state insurance departments work hard to protect the citizens of their state from unsuitable and fraudulent practices. If FINRA were to enter this area, I believe confusion would abound in the industry. Confusion can only hurt the client.

YES, I am against the expansion of FINRA's area of jurisdiction, however, I do believe that those who practice unsuitable and misleading methods in their sales should BE prosecuted. They not only do harm to their clients, but to the entire financial services industry.

Finally, more regulations or legislation will not stop those who would use methods to mislead or deceive possible clients. They will always look for methods to short-cut the process and hurt others for their gain.

Thank you for taking the time to consider my comments, and once again, I ASK that you NOT enlarge FINRA's jurisdiction to encompass non-securties sales and products.

Jim Leggott
Registered Representative

From: Bob Lindboe [blindboe@pinneyinsurance.com]
Sent: Friday, June 26, 2009 11 57 AM
To: Comments, Public
Subject: Rule 2111

I firmly oppose any expansion of Rule 2111 to include "non-securities, services and strategies". I already firmly support all suitability requirements for the products I offer and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to consumers.

Bob Lindboe

Robert Lindboe, CLU, ChFC

Pinney Insurance Center

2266 Lava Ridge Court
Roseville, California 95661
800-823-4852 x8720
916-773-4484 Fax

When it is dark enough,

you can see the stars.

From: ProfLipner@aol.com [mailto:ProfLipner@aol.com]
Sent: Saturday, June 27, 2009 12:01 AM
To: Comments, Public
Cc: ProfLipner@aol.com
Subject: Comment to Rule 2130 Proposal

I submit this comment to the proposal to amend Rule 2130. I make these suggestions based upon 25 years experience representing investors and writing about securities law and rules. These suggestions are addressed specifically to the areas in which abuse of investors is most likely to occur, and against which protection is most needed.

1. The Rule should apply to all recommendations by Members and Associated Persons, especially recommendations to hold securities or pursue any strategy, recommendations to borrow or use leverage in investing, and recommendations to employ a particular third-party manager or advisor.. The rule should not be limited to recommendations to purchase or sell securities. There is no rational basis for the existing limitation. All recommendations should be subject to this most-important of standards.

2. The Rule should follow the language of Rule 2130(b)(19)(b)("Options"), and provide that "the person making the recommendation [must have] a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended [investment or course of conduct]." Many investment strategies and products are complex. No recommendation should be made without a basis for believing that the investor understands the risks of the strategy or product.

3. The Rule should require that the Member document in writing, and retain such documentation in its files, the basis for its belief in the suitability of any recommendations to engage in any investment strategy involving the use of leverage, including but not limited to extensions of credit or options strategies. Leveraged strategies are the most dangerous. Requiring documentation as to the basis for recommending a leveraged strategies will add an important layer of protection that is currently lacking.

4. The Rule should require that the Member document in writing, and retain such documentation in its files, the basis for its belief in the suitability of any recommendations to purchase the proprietary products of the Member or its affiliates, or investments underwritten by the Member, including mutual funds managed by affiliates of the Member. The sale of proprietary products and underwritten securities creates a risk that the recommender has done so because of the fees to be earned by the Member or its affiliates. Requiring documentation as to the basis for recommendations of this kind will add an important layer of protection that is currently lacking.

Thank you for this opportunity to comment.

Prof. Seth E. Lipner
Zicklin School of Business
Baruch College, CUNY

Member, Deutsch & Lipner
Garden City, New York

National Planning HOLDINGS, INC.

VIA ELECTRONIC MAIL

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1506

Re: Comment Letter – FINRA Regulatory Notice 09-25, Proposed FINRA Rules 2111 and 2090, Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

National Planning Holdings, Inc. ("NPH") offers this comment letter on behalf of its subsidiary, Financial Industry Regulatory Authority (FINRA) member firms:

- INVEST Financial Corporation (IFC) CRD – 12984
- Investment Centers of America, Inc. (ICA) CRD – 16443
- National Planning Corporation (NPC) CRD – 29604
- SII Investments, Inc. (SII) CRD – 2225

The four NPH Broker-Dealers have over 3,300 Registered Representatives offering investment services to clients in all domestic jurisdictions. We appreciate the opportunity to submit comments on the issues raised in Regulatory Notice 09-25 regarding the proposal to create FINRA Rules 2111 and 2090 governing suitability and know-your-customer obligations. The thoughts and comments provided in this letter have been reviewed by members of senior staff of our firms, including the respective Presidents and Chief Compliance Officers, and represent the collective view of the NPH Broker-Dealers.

Proposed Rule 2111 - Suitability:

Rule 2111(a)
There are three areas being proposed within Rule 2111 section (a) that cause concern, which we have underlined for further comment as follows:

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the facts known by the member or associated person or disclosed by the customer in response to the member's or associated person's reasonable efforts to obtain information concerning the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the member or associated person considers to be reasonable in making recommendations.

Comments:

- Existing NASD Rule 2310 focuses solely on the recommendation of the purchase, sale, or exchange of any security. By expanding this expectation to include "investment strategies", the scope of the rule is significantly broadened and is largely undefined. There are a number of currently activities that may fall within the suitability review requirement, but further clarification would be required. For instance, financial plans derived by investment advisers or their investment advisory representatives, could be deemed "investment strategies" if provided by individuals registered with a member firm. We believe that such plans provided within an investment advisory context should be specifically excluded under the proposal. Other activities that may fall within the scope of the rule may include dollar-cost-average investing, reallocation elections under variable contracts, or general adverting or marketing materials discussing investment options if subsequently employed by an investor. Ultimately, the term "investment strategy" is very general in nature, and would require further clarification by FINRA.

  We request that FINRA not include the term "investment strategies" under proposed Rule 2111. Alternatively, we request that FINRA consider this concept in conjunction with proposed FINRA Rule 3110 – Supervision, which was issued for comment May 2008, to allow a holistic review of the suitability standard coupled with the supervisory requirements that would result from the new provision.

- Generally, when collecting suitability information, the client is asked to complete various forms designed to collect pertinent information regarding their personal information, financial status, goals, objectives, and so on. The additional requirement "known by the member or associated person" creates an opened-ended process that will cause challenges for member firms. There may be items known by representatives, who have intimate knowledge of client through a family relationship or friendship, that the representative does not believe are relevant to the investment decision or that clients wish not be captured in a system or shared with a broader audience[1]. Just because an associated person or member firm may know certain information, does not mean the client gives their permission for that information to be captured or disclosed on suitability forms within their file. Representatives may develop very close relationships with their clients, which may make them privy to a variety of information which is personal in nature, and should not be used without client consent. Ultimately, the client should reserve the right to determine the information maintained by the firm related to their accounts and transactions. The requirement to base decisions on this information also create operational difficulties for firms, that will be required to develop systems to capture information through use of free form text and standards to judge the relevancy of information that has previously not been captured or communicated to principals. While "free form text" can be used to have representatives communicate this information to principals, the consistency of this information and relevancy will be subject to broad interpretation.

- In regard to the suitable information that an associated person should make reasonable efforts to collect, we suggest FINRA maintain a standard approach to the terminology used in relation to this element of the rule, and any other rules with similar requirements. As an example, the text below is an excerpt from NASD Rule 2821 in relation to the same issue, yet the text varies slightly. In particular proposed Rule 2111 uses the term "other investments", while Rule 2821 states "existing assets (including investment and life insurance holdings)". We feel the term "other investments" is overly broad and should be further refined to focus on investment and life insurance holdings, further aligning the text of this rule with other existing rules such as Rule 2821.

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[1] Examples may include a diagnosed illness, pending divorce or separation, pending legal action, or similar item that a representative may have knowledge of that the client specifically does not want disclosed to broader group.

(b)(2) a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

Rule 2111 Supplementary Material .02 – Components of Suitability Obligations

Comments:
As outlined in Supplementary Material .02 of proposed Rule 2111 there are three main suitability obligations: reasonable-basis suitability, customer-specific suitability and quantitative suitability. The description of the reasonable-basis and customer-specific suitability obligations are clear and are generally expected under existing Rule NASD 2310.

The quantitative suitability obligation however, states the following:

Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

Our concern in relation to this element of Supplementary Material .02 is that it appears to be suggesting that prior to approving a transaction, the designated principal or member firm shall assess the individual transaction in relation to transactions that may have come prior, illustrating various patterns or trending which would deem the proposed transaction unsuitable. While ideal, we feel this requirement may be burdensome to member firms that may be challenged to provide this type of trending analysis upfront prior to the transaction. We suggest FINRA clarify its expectations related to the documentation standards for this type of suitability determination and to clarify when individually suitable transactions may not be suitable in the aggregate.

Rule 2111 Supplementary Material .03 – Customers' Financial Ability

Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities if such recommendation is inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

Comments:

- We feel the term "reasonable expectation" should be more clearly defined. We do not feel it is realistic for an associated person to know or inquire as to the customer's financial status prior to each recommendation. Generally, the associated person inquires as to the customer's financial situation at the time of account opening, every three years thereafter as required under SEC Rule 17a-4, and any time the customer provides a material update. We believe the onus should fall to the customer to ensure the associated person is made aware of the customer's financial situation and any material changes to that situation should they occur.

In summary, the NPH Broker-Dealers reiterate their support of FINRA's rule consolidation process. We have great appreciation for the time and efforts involved in such an enormous undertaking and believe that member input into the process is critically important. However, we respectfully request that the FINRA consider the issues we have outlined related to Regulatory Notice 09-25 and proposed FINRA Rules 2111 and 2090, which may have unintended consequences to the member firm community.

Sincerely,

James Livingston

James Livingston
President/Chief Executive Officer
National Planning Holdings, Inc.

From: mloftis@memphis.nef.com [mailto:mloftis@memphis.nef.com]
Sent: Thursday, June 25, 2009 6:09 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

To whom it may concern:

In regards to the above referenced rule proposal, I am strongly opposed to this regulation being passed. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Mark Loftis, CFP®, CLU, ChFC
Financial Advisor
New England Securities
Strategic Financial Partners
795 Ridge Lake Blvd
Suite 200
Memphis, TN 38120
(901) 260-6433 (p)
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mloftis@memphis.nef.com

Regulatory Affairs
1 North Jefferson Ave
St. Louis, MO 63103
MO 3110
314-955-6851
Fax 314-955-9668

June 29, 2009

Via E-mail: pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-24
FINRA Rule Governing Know Your Customer and Suitability Rules

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA") is pleased to comment on FINRA's proposed Rule 2090 ("know your customer") and proposed Rule 2111, on suitability. WFA supports generally the principles underlying proposed Rule 2090 and Rule 2111. We file this brief letter to highlight some concerns raised by the proposed rules in their current form.

WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.

Proposed Rule 2090 – Know Your Customer

"Know your customer" and suitability rules are the basic building blocks of the relationship between financial advisors, clients and brokerage firms. A threshold question concerns whether FINRA should place the underlying tenets of both rules into one comprehensive rule. Though FINRA states that "the obligation arises at the beginning of the customer/broker relationship and does not depend on whether a recommendation has been made," placing the information in the same section as suitability will give the rules a logical flow and give the clarity to the appropriate information to gather at the relevant stage of the investment relationship.

Ms. Marcia E. Asquith
June 29, 2009

Regardless of where it situates "know your customer" in the rule book, FINRA's Supplementary material raises some concerns.[1] "Financial profile" as used there is an undefined term. Securities professionals likely will have differing and often confusing standards on the elements of a "financial profile" such that there will be no consistency regarding what information needs to be gathered in order to satisfy the "know your customer" requirements. It appears that the supplementary material is itself making a connection to the suitability rule's (proposed Rule 2111(a)) requirements for "customer information."[2] FINRA must provide a clear definition of "financial profile" that the brokerage industry can use uniformly in establishing and managing their relationships with investors.

A second definitional issue in the 'know your customer" supplementary material is the inclusion of "investment objectives." Many firms in the industry provide customers the opportunity to participate in on-line, self-directed accounts. Brokerage firms using this model ask that customers provide essential information in order to participate in these types of accounts which satisfies the "know your customer" rules. Traditionally, these accounts have not needed to list investment objectives since the broker is not making recommendations and clients determine their own investment objectives and manage their account accordingly. The proposed supplementary language specifically mandates that brokers gather "investment objectives" as a part of uncovering "essential facts." The adoption of the supplementary language would unduly expand the requirements set forth in the "know your customer" rule causing an unnecessary and burdensome requirement for self-directed customer accounts with no demonstration of a benefit. Therefore, we recommend that FINRA remove the "investment objectives" requirement under proposed Rule 2090 or create an exemption for self-directed customer accounts.

Proposed Rule 2111 – Suitability

WFA generally supports the proposed language set forth in Rule 2111 – Suitability as the basic suitability obligations[3] have long stood for not only customer protection but protection for firms. Accordingly, gathering and retaining customer information when opening and servicing accounts is simply good business as well as complying with the regulatory requirements of suitability. There are, however, some areas of concern. The rule as drafted enumerates a number of factors that some might interpret as a mandatory "checklist" for every customer in every situation.[4] The facts relevant to a suitability analysis will vary by customer and investment situation, and it may be that an overly formulaic application of certain listed factors prevents a firm from making the correct suitability call for that customer. It may be that some will conclude with a checklist, that a firm must give each listed factor equal weight in each suitability analysis, and a conclusion that would also lead to flawed assessments as to whether a firm reached a reasonable result on suitability. The goal is that firms gather enough relevant information to be comfortable that there

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[1] FINRA states in the Supplementary Material that facts "essential" to knowing the customer include the customer's financial profile and investment objectives or policy.

[2] The rule would require the following expanded list of required information from the customer, "age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and any other information the member or associated person considers being reasonable in making recommendations."

[3] FINRA has defined three suitability obligations as: "1) reasonable basis (firms must have a reasonable basis to believe, based on adequate due diligence, that a recommendation is suitable at least for *some* investors); 2) customer specific (firms must have reasonable grounds to believe a recommendation is suitable for the specific investor); and 3) quantitative (firms must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive."

[4] See footnote 2, above.

is a reasonable and supportable basis for concluding that its recommendation is suitable. We join the call of others that FINRA modify the rule to allow the industry to apply the factors flexibly and assign them varying importance depending upon the facts and circumstances of a given recommendation.

The proposal needs to clarify some of the terms it uses for the enumerated required information. Specifically, FINRA should further define the phrases "investment time horizon" and "liquidity needs." Although FINRA has attempted to quantify investment time horizon and liquidity needs[5], the definitions of and expectations for these terms are still ambiguous. FINRA should make clear whether it is expecting an overview of the investment time horizon and liquidity needs for each account at opening or as a subset of information gathered at each transaction in a given product within the account.

It is important to keep in mind that many products now solicit information regarding the length of expected investment as well as liquid assets on hand and/or liquid net worth prior to purchase. WFA strongly recommends that FINRA further define these terms and provide clear guidance on when and how the information should be gathered and maintained.

FINRA has also added language in the proposed rule that would ask brokers to gather "any other information" considered to be reasonable in making "recommendations."[6] This factor is ambiguous and overly broad. It would be nearly impossible for a broker or firm to adequately cover "any other information" that a customer may have. The industry relies on customers to provide this information openly and honestly in order to give them the best service and products for their individual needs. FINRA's ambiguity in this provision will leave the door open to costly and time consuming litigation to interpret the limits of "any other information." In addition, it is impractical for FINRA to expect firms to adequately supervise and maintain the technology needed for such an ambiguous requirement. Unless FINRA makes it clear that industry professionals should consider flexibly the current list of enumerated information in making a suitability determination, it should eliminate this language in the proposed rule.

FINRA sought comments on whether they should expand the suitability obligations to include "all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities." WFA provides a wide range of products, financial services and strategies to their customers through brokerage and bank accounts. We are able to satisfy supervisory and regulatory obligations set forth by each governing agency for all recommendations made regardless of the attachment to a security product. Expanding the suitability obligations would duplicate or overlap current supervisory and regulatory obligations. Additionally, it is unclear how FINRA would monitor and review the application of the expanded suitability language. FINRA has not explained how it will develop the expertise to review and enforce the standards for countless non-securities products. FINRA should refrain from expanding the suitability rule to include non-security recommendations.

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[5] Refer to FINRA Notice to Members, 07-43 Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers.

[6] Proposed Rule 2111(a).

Ms. Marcia E. Asquith
June 29, 2009

Institutional Customer Exemption

FINRA has provided an exemption for an institutional account under proposed Rule 2111(b)[7]. WFA fully supports FINRA's effort to provide a constant definition of institutional accounts versus institutional customer. The additional requirement of receiving notification from the institutional customer that they will "affirmatively forego" their customer-specific obligation of suitability is an untenable and unnecessary rule provision. Institutional customers are usually sophisticated, and they have independent obligations to make suitable decisions in the management of the institutional account. For example, some have obligations under ERISA or state municipal, trust or corporate law. Few brokers will have the full financial picture of many institutional accounts, and they are unlikely to be familiar with the full legal standards that apply. Forcing brokers to make a suitability determination for such large and varying institutions likely will be at best random guesses and illusory. Brokerage firms are already under an obligation to determine the customer's capacity to exercise independent judgment and to evaluate the customer's ability to review recommendations by the firm. These factors supersede the need for an affirmative indication from the firm as to whether they need the protections of suitability afforded individual customers. Therefore, WFA strongly recommends that FINRA remove this requirement in the proposed exemption language.

Thank you for providing WFA the opportunity to comment on the "know your customer" and suitability rule proposals. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs

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[7] The proposed language is as follows: "(1) the institutional customer affirmatively indicates that it is willing to forego the protection of the customer-specific obligation of the suitability rule and (2) the member or associated person has a reasonable basis to believe that the institutional customer is (A) capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (B) exercising independent judgment in evaluating the member's or associated person's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, these factors shall be applied to the agent."

-----Original Message-----
From: Les Von Losberg [mailto:lesv@owropinion.com]
Sent: Thursday, June 25, 2009 2:01 PM
To: Comments, Public
Subject: Extension of suitability requirements to include non-securities transactions

I am in favor of putting in place procedures that guarantee that sales of investment products to indivdiuals are suitable to the individuals' needs. I am not, however, in favor of having suitability requirements imposed on transactions that do not involve securities and which, therefore, should not come under the purvue of FINRA: sales of fixed annuities or life insurance contracts, for example. Such oversight should be vested in state (or, should one be established) a federal) agency that sets for that suitability standards that apply to the types of transactions over which it has jurisdiction. Many insurance companies already have instituted such suitability oversight with respect to sales of annuity contracts and the NAIC has developed model suitability forms as well.

Les Von Losberg, CLU, ChFC

Les Von Losberg
EMail - lesv@owropinion.com
Tel: 888-243-8697
Direct dial: 201-857-1241
10 Evergreen Way
Sleepy Hollow, NY 10591

From: Bret Maffett [bmaffett@cmsmith.com]
Sent: Monday, June 29, 2009 3:36 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

To Whom It May Concern:

I wanted to write to express my concern with the FINRA proposal to expand suitability requirements to non-security products. FINRA has no jurisdiction over non-security products and its oversight is unnecessary. Non-security products are regulated under state insurance regulations and their regulators and FINRA should leave that arrangement as is.

Quite frankly, your involvement may actually be more confusing to consumers than helpful.

Thank you for your consideration.

Bret Maffett, CLU, ChFC, CLTC

President, Insurance and Retirement Services

From: Magno, Jon [mailto:jmagno@highland.com]
Sent: Tuesday, June 23, 2009 11:52 AM
To: Comments, Public
Subject: I oppose Regulatory Notice 09-25

As a member of the Insurance community, I oppose Regulatory Notice 09-25. Finra's authority should not encroach on non-securities products and services. Such products are already subject to regulation by state regulators.

Thank you for your consideration.
Sincerely,

-Jon

Thank You !
Jonathan A. Magno, CLTC
Internal Wholesaler
Highland Capital Brokerage Northwest
an NFP Company
1601 5th Avenue Suite 1800
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From: MelMaltz@aol.com [mailto:MelMaltz@aol.com]
Sent: Tuesday, June 23, 2009 11:26 AM
To: Comments, Public
Subject: Regulations of non-security products

As a licensed securities insurance agent, I feel that FINRA's position is with securities not general insurance products. We are state regulated now and adding another layer of oversight will only add to cost and make it more difficult for "Joe SixPack" to protect his family.

Melvin Maltz, LUTCF
Lone Star Advisory Group
1 Sugar Creek Ctr. Blvd. #475
Sugar Land, TX 77478
Ph: 281-207-1927
Cell: 713-291-6343
Fax: 281=207-1921
www.silverfox.org/bio-maltz-mel.html

From: Patrick Manning [patrick_manning@lifetimefinancialgrowth.com]
Sent: Thursday, June 25, 2009 3:59 PM
To: Comments, Public
Subject: suitability rules

Dear Ms Asquith:

I help families protect their income and lives with life insurance products. While I understand the need for regulation and oversight in light of recent events in the financial services industry, I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Please do not make it more difficult for me to help people.

Sincerely,

Patrick Manning

Patrick Manning, CLTC
Capital Planners
25101 Chagrin Blvd , Suite 100
Beachwood, OH 44122
Phone. 216-360-7400
Fax: 216-360-7440

From: connie@marcumbenefit.com
Sent: Tuesday, June 23, 2009 8:25 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Connie Marcum
1444 Horn Street, Suite 102
Clarksville, IN 47129-7743

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I strongly agree that all sales people should not be involved or promote misleading sales initiatives of any kind. FINRA does not have legal authority over PRODUCTS THAT ARE NOT SECURITIES!!.

No one should be involved/engaged in unsuitable sales practices and should be aggressively prosecuted and subject to meaningful sanctions.

THis just isn't inside FINRA's scope of authority!!!

FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

THE STATE has this authority and responsibility!

IF FINRA jumps into the mix of oversight it would be conflicting and confusing and further delay and confuse the regulatory requirements. This will not help the consumer and will complicate the industry.

Two heads never work!

Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or

revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Connie Marcum
812-206-7105

AMERITRADE
Holding Corporation

June 29, 2009

VIA ELECTRONIC MAIL

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: *FINRA Regulatory Notice 09-25 – Proposed Amendments to the Suitability and Know Your Customers Rules*

Dear Ms. Asquith:

TD AMERITRADE, Inc. [1] ("TD Ameritrade" or "the Firm") appreciate the opportunity to comment on the above referenced Regulatory Notice in which FINRA proposes to adopt new modified rules and related Supplementary Material governing suitability and know-your-customer obligations in the Consolidated FINRA rulebook. Although TD Ameritrade applauds FINRA's efforts to streamline and consolidate the NASD and NYSE rulebooks, TD Ameritrade strongly opposes the proposed rule change regarding the collection of suitability-like information at account opening because it creates a significant potential for unintended consequences that could adversely impact member firms' ability to offer brokerage services to self-directed clients. TD Ameritrade also shares its perspective on other aspects of the proposal below.

Know Your Customer Information at Account Opening

Proposed Rule 2090 and Supplemental Material .02 would impose an obligation on firms to obtain "essential facts" about all customers upon account opening "including the customer's financial profile and investment objectives or policy." FINRA notes that "[t]his obligation arises at the beginning of the customer/broker relationship and does not depend on whether a recommendation has been made."

Existing rules require firms to collect essential facts about a client when opening an account. Firms are required to confirm the identity of the customers, their address, the legal authorization of persons on the account, the source of funding, to name a few. Many firms also collect additional information from customers for many reasons. For example, information may be collected to determine what type of products customers may be interested in, or to allow the firm to approve more easily the opening of options or margin accounts.

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[1] TD Ameritrade is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 34-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 5.1 million funded client accounts with approximately $258 billion in assets. In addition, on June 12, 2009, TD Ameritrade Holding completed the acquisition of thinkorwim Group, Inc., including its broker-dealer subsidiary, thinkorswim, Inc.

The key point is that a firm's decision on what information to collect beyond the minimum requirements is driven by the firm's obligations to its customers based upon its business model and applicable regulations. For firms offering self-directed brokerage accounts, it is not necessary for the firm to know the customer's financial profile or investment objectives, beyond those requirements that may be specifically tied to an options account. In fact, if a customer opens a self-directed brokerage account, provides such information at account opening and decides to trade in a fashion inconsistent with such information, there is significant concern that regulators, arbitration panels and courts may later seek to hold the firm liable for allowing the customer to trade inconsistent with their stated objectives.

TD Ameritrade doubts that FINRA intended to create such an obligation for brokers currently offering investors self-directed brokerage services to investors. Moreover, customers already find that providing unnecessary personal information is intrusive and it unnecessarily adds superfluous information to the firm's records required to be maintained in a secure fashion. As a result, the Firm requests that FINRA amend its proposal and not expand the know your customer requirement at account opening and continue to allow member firms to decide what information to collect beyond the essential facts as required today.

Suitability Obligations to Non-Securities Investment Products

FINRA requests comment on whether it should expand the suitability requirement to all recommendations of investment products, services, and strategies, regardless of whether the recommendation involves securities.

TD Ameritrade believes it is appropriate for suitability obligations to be limited to securities. In particular, it would appear that the collection of suitability information before recommending cash management products, like bank sweep and bank savings products, would be a poor and ineffectual use of time and resources given that such products are acknowledged to be suitable for all clients. This position is consistent with current NASD Rule 2310, which exempts money market fund recommendations from a suitability analysis. In addition, some products, like commodities, are subject to regulatory requirements administered by other regulatory authorities, and imposing an additional suitability obligation in such a situation could create conflicting standards for member firms selling such products.

Information Required to be Gathered When Determining Suitability

FINRA proposes that a suitability analysis must include not only what the customer discloses, but also, "information that is known by the member or associated person." TD Ameritrade submits that it will be impracticable for member firms to create policies and procedures reasonably designed to ensure compliance with this proposal, and would not be necessarily in the best interest of customers.

By way of example, suppose a customer maintains several accounts at a member firm and its affiliates, each with its own purpose: (1) a self-directed 401(k) account; (2) an advised account seeking to allocate among various ETFs to save for a child's college expenses; (3) a brokerage account used by the customer to seek aggressive growth, with a high risk tolerance; and (4) an account to carry out a 10b5-1 trading plan. For each account, the customer may speak to different registered representatives. In addition, the affiliate companies may not be permitted to share the customer's information. Moreover, the discussions may be very specific to the account in question expressing the customer's varied intent with regard to each specific account. The Firm submits that not only would it be extremely difficult to design

procedures reasonably designed to ensure that each representative has knowledge of every conversation a customer has with a firm, but that it may have the unintended consequence of delaying services to a customer while the different divisions or companies sort out the varied information obtained under differing circumstances by a customer. As a result, comments, questions and discussions had regarding one situation or account should not be imputed to a firm and its representatives each time a different recommendation is made. Given this, the Firm submits that such a standard is impractical, not in the customer's best interest and should be withdrawn.

FINRA also proposes Rule 2111(a) to require member firms to collect additional information when making a suitability determination: (1) age; (2) investment experience; (3); investment time horizon; (4) liquidity needs; and (5) risk tolerance. Current NASD Rule 2310 requires member firms to collect the following information before executing a recommended transaction:

(1) the customer's financial status;
(2) the customer's tax status;
(3) the customer's investment objectives; and
(4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

TD Ameritrade believes that firms should have the ability to determine the information they need to collect when recommending products and services. For instance, information that is important to collect in recommending one product may be unnecessary in recommending another. Also, from a practical standpoint, customers will sometimes balk at giving the necessary information as they perceive the questions to be too probing and private. As a result, TD Ameritrade believes member firms should have the discretion to determine what information beyond the current NASD Rule 2310 requirements is necessary in making a suitability determination. In many cases, member firms go beyond what is required by Rule 2310. Ultimately, the member firm must be comfortable that it can demonstrate that it had a reasonable basis to make the recommendation.

Alternatively, TD Ameritrade suggests that proposed Rule 2111(a) list the additional information to collect as recommended but not required. Whether to collect such additional information should be left to the discretion of the member firm.

Finally, TD Ameritrade requests that FINRA clarify the continuing applicability of NASD Notice to Members 01-23, which was issued as a Policy Statement interpreting NASD Rule 2310. Specifically, the Firm requests whether NASD Notice to Members 01-23, which provides guidance on what constitutes a recommendation for purposes of the suitability rule, will remain in effect after NASD Rule 2310 is eliminated.

* * * *

TD Ameritrade appreciates the opportunity to comment on FINRA's latest proposals regarding suitability and know your customer requirements. In sum, TD Ameritrade comments are as follows:

- FINRA should not create regulations that have detrimental effects on businesses that serve the self-directed investor and, as a result, FINRA should not expand know your customer requirements concerning the collection of information at account opening to include a customer's financial profile and investment objectives.

- Suitability need not and should not be extended to non-securities investments.

- FINRA should not require member firms to collect additional information when making suitability determinations. In the alternative, the Firm recommends the additional information collection be left to the discretion of member firms.

Please contact me at 443-539-2128 if you have any questions regarding the Firm's comments.

Respectfully Submitted,

/S/

John S. Markle
Deputy General Counsel, Regulatory Operations

From: Marks, Jay [mailto:jhmarks@finsvcs.com]
Sent: Thursday, June 25, 2009 5:13 PM
To: Comments, Public
Subject: re: expansion of suitability obligations to recommendations that do NOT involve securities

To whom it may concern:

As a registered representative of a major brokerage firm, I am distressed to hear of FINRA'S proposal to expand the scope of finra's suitability rules and obligations to include recommendations that do not involve securities. As the days pass, the rules and regulations become more cumbersome, which distracts from the main goal and objective of properly and honestly servicing the customer. Reulate if you must in
the areas concerning (SECURITIES), and leave the balance of the regulations to the states and other governing concerns that protect the consumer.
Finra's new proposed reulations are similar to adding new laws and controls to gun laws. It's not those people who have gun permits that are the propblem, its the drug dealers and criminals without the
permits that kill people. Do not kill off the GOOD BROKERS with added paper work. Let them meet the needs of the client.

Respectfully,

Jay H. Marks, CLU, ChFC, CLTC
JHM Financial Services Group, Inc.
5 Angelica Court
Hauppauge, NY 11788-1650
Ph: 631-360-2254
Fax:631-361-8620
email:jhmarks@finsvcs.com

From: Ed Martell [mailto:ed.martell@lpl.com]
Sent: Thursday, June 25, 2009 7:46 PM
To: Comments, Public
Subject: suitability rules

Comments are:

I firmly oppose any expansion of Rule 2111 to include "non-securities, services and strategies". I already firmly support all suitability requirements for the products I offer and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to consumers.
Comments are

Ed Martell
Ed Martell & Associates
Financial Consultant
9550 Warner Ave., Suite 200
Fountain Valley, CA 92708
714 962 1003 -800 795 2167
California Insurance License #0639960

From: David I. Martinez [mailto:davidimartinez@sbcglobal.net]
Sent: Tuesday, June 23, 2009 2:50 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I am a resident of the State of Texas where I am licensed to sell life insurance. I also am a Registered Rep having my Series 6 and 63 licenses. I own my business and am writing to express my concern as to FINRA extending their powers to include products that are not securities under their regulatory umbrella. I am adamantly opposed to expanding FINRA's scope of authority on this matter.

In Texas, the State has comprehensive regulations enforced by state regulators to insure that insurance and other non-securities products are sold properly. We do not need FINRA to encroach on such authority as granted by our state. The state regulators are doing an excellent job of consumer protection by prosecuting people who mislead the public and who sell products that are not suitable to consumer needs. It would be a redundancy to implement Notice 09-25

Consider in these trying times where you will get the resources to enforce the proposed Regulatory Notice being proposed. I strongly believe that the system currently in place by the State of Texas is extremely adequate and it would be a duplication of services and possibly a waste of resources.

Lastly, I urge you not to expand FINRA's suitability obligation as it may result in conflicting and confusing regulatory requirements which will not benefit the consumer. It will very possibly detract from the excellent work our state regulators are doing to protect the consumers of Texas.

I respectfully request that you consider my views on this matter.

Sincerely,

David I. Martinez
David I. Martinez
Insurance Planning Services, Inc.
6414 McPherson Road, Suite 7
Laredo, TX 78041
Office 956-722-0945
Fax 956-723-3340
david@davidimartinez.com / Numbers 6:22-27

-----Original Message-----
From: jennifer.maughan@benfinancial.com
[mailto:jennifer.maughan@benfinancial.com]
Sent: Thursday, June 25, 2009 2:56 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Jennifer Maughan
181 E 1600 N
North Logan, UT 84341-1969

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am opposed to the expansion of FINRA's suitability to insurance and non-securities. I want to make clear that I am not opposed to reasonable regulation in general and have not found that it has interfered with my business practice. I already believe in protecting and serving the client as honestly as I know how and welcome guidelines. I have found that in many ways these rules protect me as well as my client. I may be unusual,
but that is my view. However, my experience is that there are adequate regulations in place for insurance or other non-securities transactions already. Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which could easily detract from the goal of consumer protection. It is important to remember what the objectives of regulations are and not confuse issues. My assumption is that you want to protect the consumer by trying to regulate honesty. I'm sure you must realize that those who already try to get around, or completely ignore regulation, will not be thwarted by more of the same. Sometimes we fall into the trap of preaching to the choir and then we lose the choir. It will be the truly trustworthy advisor who will be stopped, not those who you truly are trying to regulate and control, who are experts at avoiding
the regulations, and will thus thrive in a less competitive environment.
I personally have no intention of leaving the business, but I am not typical. I am concerned for those whose records are spotless and who always have had the highest integrity in their practices. I am unique as I am a woman working part time and I will take whatever time I need to do it right. I am not solely dependent upon this income to survive - my goal is only to serve - and I am not

motivated or enticed by huge revenues, bonuses, or side benefits - therefore I adjust easier to increased regulations though I would be forced to leave if it became fiscally necessary. I know that many honest financial experts will leave the industry as it becomes more and more complicated and your objective will become harder than ever to accomplish. I believe that insurance is vital and a profound piece of a good and strong financial plan and is a huge structural piece in the backbone of fiscally strong families and businesses and more regulation is only going to make it more expensive and
harder to obtain for those who need it most. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. I hope I am clearly stating that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions, but in simple terms, when someone or some entity tries to be a jack-of-all-trades, what usually happens is they end up being a master of none - their power is diluted and objectives become lost in bureaucracy. It is a true principle - let the states do what they do best.

Sincerely,

Jennifer Maughan
435 770-4721

T. ROWE PRICE INVESTMENT SERVICES, INC.

SARAH MCCAFFERTY
Vice President
Chief Compliance Officer

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Phone 410-345-6638
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June 29, 2009

Ms. Marcia Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 09-25

Dear Ms. Asquith:

T. Rowe Price Investment Services, Inc. ("**T. Rowe Price**") appreciates the opportunity to comment on the proposed consolidated FINRA Rules governing suitability and know-your-customer obligations.

T. Rowe Price is a registered broker/dealer under the Securities Exchange Act of 1934 and a FINRA member firm. It acts as principal distributor of the T. Rowe Price family of funds ("**Price Funds**"). The Price Funds are offered directly to retail investors as well as through financial intermediaries such as broker/dealers, insurance companies, banks and plan recordkeepers. As of March 31, 2009, the Price Funds held assets of $158.8 billion. T. Rowe Price also provides brokerage services to Price Fund shareholders and other retail customers as an introducing broker through its Brokerage Division and provides certain services to customers who hold T. Rowe Price's two proprietary no-load variable annuity products. It also serves as the distributor for Section 529 College Savings Plans issued by two states.

The Scope of the Proposed Suitability Rule. T. Rowe Price generally supports FINRA's proposal in this area. We believe it is important to codify various interpretations regarding the scope of the suitability rule, clarify what information should be gathered and used as part of a suitability analysis, and create a clear exemption for recommended transactions involving institutional customers if certain conditions are met.

FINRA has also specifically sought comment about whether it 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. We do not think that the suitability obligations should be expanded in this manner because we do not believe that FINRA has jurisdiction over recommendations that do not involve securities.

Know Your Customer. T. Rowe Price is concerned about the scope of the proposed Know Your Customer Rule 2090 and its accompanying Supplementary Material, under which member firms would be required to collect and maintain "essential facts," as defined by FINRA, concerning *every* customer. These "essential" facts would include the customer's financial profile and investment objectives or policy. As justification for this substantial change to existing NASD requirements, FINRA points to NYSE Rule 405(1), which it proposes to transfer into the Consolidated FINRA Rule book in modified form.

T. Rowe Price understands that NYSE Rule 405(1) was originally adopted to protect broker/dealers against poor credit risks and unauthorized transactions. In fact, NYSE Rule 405(1) and its Supplementary Materials do not specify what information a broker/dealer must collect in order to demonstrate "due diligence" except in very limited instances (*e.g.*, nonmember corporation accounts), reflecting that "essential facts" can vary depending on the customer, the account and the risk presented.

T. Rowe Price believes that FINRA is incorrectly attempting to graft suitability-type information requirements that are similar, if not identical, to those found in current Rule 2310(b) onto the more general NYSE requirement that generally does not specify what information a firm must collect about customers, orders, accounts, and authority to act for a customer. For example, we believe that the information that would be collected for "customer's financial profile" as described in the proposed Supplementary Material would be essentially the same information that would be collected for "customer's financial status" in Rule 2310(b)(1). Similarly, we feel that the information collected about a customer's "investment objectives or policy" under the proposed Supplementary Material would be essentially the same information that would be collected for "customer's investment objectives" in Rule 2310(b)(3). We believe, however, that if no recommendation is made to a customer, then each firm is in the best position to determine for itself what information it needs to collect and maintain about each of its customers and that these determinations should not be mandated by regulation.

In its release, FINRA states that each firm would be required to collect the required information so that the firm would "know" facts that FINRA has apparently deemed to be essential in helping a firm determine for itself, among other things, whether to approve the account, where to assign the account, whether to extend margin and whether the

customer has the financial ability to pay for transactions. T. Rowe Price has several concerns with this position. First, we believe that this proposed requirement and its justifications do not reflect the variety of business models in the industry. For example, T. Rowe Price does not typically assign Brokerage accounts to specific representatives, so this enumerated reason does not apply to its business.

Second, T. Rowe Price Brokerage already distinguishes among types of accounts, for example, in deciding what information it will require in connection with opening each type. As a result, the T. Rowe Price Brokerage margin application asks about the applicant's income, net worth, liquid net worth, occupation or source of income if retired or not currently employed, and experience in investments and with margin. We have determined that this information can be important in judging whether a margin account should be approved. We have also made the determination, however, that we do **not** need to ask for all of this information when opening a Brokerage cash account and so request information about the applicant's income and employment for those accounts. Similarly, T. Rowe Price Brokerage has put in place special approval requirements for certain types of trades based upon its own risk assessment analysis. Given the nature of its business model, we do not believe that the information described as "essential" in the proposed Supplementary Material is relevant to T. Rowe Price Brokerage's decisions regarding all of its customers' accounts.

Third, we believe that the requirement to collect this information will be burdensome and costly both to the firm and ultimately to its Brokerage customers without any resulting benefit to any of these parties. In Notice 98-47, FINRA (then NASD Regulation) extended the exemption in Rule 3110(c)(2) from collecting a customer's tax identification or Social Security number, occupation of customer and name and address of employer, and whether the customer is an associated person of another member ("**Retail Customer Information**") from just accounts in which investments were limited to transactions in money market funds that are not recommended by the member or its associated person to accounts in which investments are limited to transactions in open-end investment company shares that are not so recommended. In explaining its rationale for this amendment, NASD Regulation conceded that "[a] primary purpose of obtaining Retail Customer Information is to help a member evaluate the suitability of a recommendation." It noted that it had made the determination that "the requirement to obtain Retail Customer Information is burdensome and largely unnecessary as it applies to members who distribute directly marketed mutual funds and other unsolicited accounts that are limited to mutual fund shares and for which no recommendations are made."

In its discussion of the change, NASD Regulation stated that two of the three items of Retail Customer Information were already required by other laws or rules. Although the remaining item – the customer's occupation and the name and address of his or her

employer – can be viewed as important from a suitability viewpoint, this information is much more important to consider in making decisions about risks presented in opening and maintaining a customer's Brokerage account, and the requirement to collect Retail Customer Information continues to apply accounts of this type in which recommendations are not made. In contrast, the information that FINRA would deem "essential" about every customer – the customer's financial profile and especially the customer's investment objectives or policy – is much further removed from any business or risk assessment of the customer. In fact, as reflected by the fact that essentially the same information is required currently in Rule 2310(b), this information is completely aligned to a suitability assessment. We urge FINRA to follow the lead of its predecessor regulator and acknowledge in the proposed rule that collecting the information proposed is both burdensome and unnecessary in a broker/dealer account in which the broker/dealer or its associated persons will not make recommendations.

Finally, we are quite concerned that the very collection of the information described in the proposed Supplementary Material on an across-the-board basis might imply, incorrectly, that Brokerage will only permit a customer to execute a self-directed transaction if it has determined that the transaction is at some level appropriate for that customer based upon, for example, whatever investment objectives or policy the customer described in the account application or that the firm will conduct a post-trade review for this purpose. We clearly disclose to all of our Brokerage customers and prospective customers that the firm does not provide recommendations or advice regarding a customer's Brokerage transactions and we strongly object to being required to ask for information that is not relevant to the operation of our business and that might confuse our customers.

We believe that FINRA should continue to allow each firm to make its own judgments about what information it should collect in connection with the opening and maintenance of an account where recommendations will not be made. We strongly disagree that any firm should be required to collect "essential" facts, as determined by FINRA, regarding a customer if the firm does not make recommendations regarding transactions in that customer's account.

Authority of Person Acting on Behalf of Customer. To the extent that the requirement in proposed Rule 2090 to know and retain "the essential facts concerning ... the authority of each person acting on behalf of such customer" requires the collection and maintenance

of the information necessary to establish that such a person does in fact have appropriate authority to act for the customer, we have no objection to it, but believe it might better be incorporated into FINRA's NASD Rule 3110.

If you have any questions about T. Rowe Price's comments, please do not hesitate to contact me.

Very truly yours,

Sarah McCafferty

cc: J. Gilner, Esq.
D. Oestreicher, Esq.
Ms. M. Williams

From: Steven McCauley [smccauley@mis.net]
Sent: Monday, June 29, 2009 3:58 PM
To: Comments, Public
Subject: Comment on FINRA Rule 2111 - Suitability

FINRA:

I am a securities attorney in Lexington, Kentucky with over 15 years of securities arbitration experience. I am in support of the new FINRA Suitability Rule (Rule 2111), but feel the revision could do much more to protect public customers.

For instance, the Rule should place an affirmative duty on the registered representative to LEARN the facts necessary to make a reasonable suitability determination. As written, the duty appears to fall on the customer to provide such information. The Rule should mandate that a registered representative know all the material facts and circumstances about his or her customer prior to making a recommendation. In the rare instances where a customer refuses to disclose information, no recommendations should be permitted.

Furthermore, firms should be banned from the all too common practice of having a registered representative fill out a largely indecipherable new account form and then present the form to the customer to sign off on. The great majority of customers know neither the industry's meaning of the terms utilized in the form, like "growth", nor the significance of those terms as they relate to the risks assumed customer's accounts.

Though I feel the Rule could do much more to protect individual customers, I approve of the revisions.

Respectfully submitted,

Steven M. McCauley, Esq.

Charles C. Mihalek, P.S.C.
510 First National Building
167 West Main Street
Lexington, KY 40507
(859) 233-1805 Phone
(859) 233-7994 Facsimile

From: steve.mcdanald@nmfn.com [mailto:steve.mcdanald@nmfn.com]
Sent: Thursday, June 25, 2009 3:32 PM
To: Comments, Public
Subject: Expansion of Suitability Obligations to Recommendations that do not involve securities.

As a licensed insurance professional and registered representative, I want to express to you in the strongest terms possible that I am OPPOSED to FINRA expanding its suitability obligations to recommendations that do not involve securities!!!!!!!!

I absolutely believe that those who promote products and engage in misleading sales practices should be aggressively prosecuted and should be sanctioned by the appropriate existing governing bodies. The problem is that FINRA does not have jurisdiction over products and services that are not securities. Laws and agencies that already exist can deal with those who do not represent my industry as they should. Those agencies already have the expertise and knowledge to protect the consumer and punish those who abuse the system. FINRA does not have the expertise or the resources to police this area of my business and there is no reason to expand its authority and duplicate consumer safeguards at added cost to taxpayers.

Additionally, we have enough regulation already, and FINRA's expansion into the non-securities related area of the financial services business is likely to add confusion and conflict that will ultimately be detrimental to the protection of the consumer which is what FINRA says this is about.

This whole business regarding the standard of care that investment advisors such as myself owe to their clients is in a state of flux as I write this to you. Legislators, the Administration, the SEC and many others are debating this issue right now. FINRA's intrusion into this area right now would be inappropriate and do nothing but add to the confusion and ultimately cost for the consumer. I believe that FINRA should allow the bigger conversation to take place and then present one plan that best protects the consumers' interest that is backed by lawmakers, the Administration and any other pertinent regulators.

As I stated above, I urge you in the strongest terms possible, NOT to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for allowing me to express my views on this subject, and please take them into consideration.

Stephen R McDanald

Stephen R. McDanald, CFP, CLU

Financial Advisor

Northwestern Mutual Financial Network

1544 Winchester Avenue, Suite 1016

Ashland, KY 41101

606.324.4337 - office

steve.mcdanald@nmfn.com

For online account access and customer service, visit my internet site: www.stevemcdanald.com

Mail Opt-out form can be found at the following URL:
https://service.nmfn.com/cbpeopt/EmailOptOut.do.

Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Edwin McKnight [mailto:edwin@mcknightfinancial.net]
Sent: Tuesday, June 23, 2009 2:22 PM
To: Comments, Public
Subject: Regarding regulatory notice 09-25

To whom it may concern:

It is my understanding that that FINRA is 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. If true, I am very alarmed at such a move.

I believe every advisor should always put the client's interest first, recommending only the products and/or services that meet the client's stated objective.

I believe the NAIC, insurance industry models of suitability requirements, as well as the integrity of the advisor, will continue to serve the majority of public interests.

This expansion will give rise to conflicting regulations and guidance. The paperwork, suitability and obligations now required are already a heavy burden.

Adding another level of bureaucracy will not serve the public's interest.

I respectfully request FINRA withdraw this proposed expansion.

Finally, I cannot visualize the NAIC accepting this entry into their domain of oversight without a contest.

This could lead to additional conflict between governing bodies, when what we really need is unity and simplicity.

Respectfully,

Edwin A. McKnight

References for Investors: Guide to Investing and other Important Investment Information

Email addresses:

edwin@mcknightfinancial.net (Please use for all investment related correspondence. This email address is monitored by Woodbury Financial Services)

edwin@mcknightbenefits.com (Use for all else)

615 895 8574, ext. 14, 1 800 249 8358, 615 895 3402 fax 1850 Memorial Blvd., Murfreesboro, TN 37129

Securities and Investment Advisory Services offered through Woodbury Financial Services, Inc.Member FINRA, SIPC, and Registered Investment Adviser. Mcknight Financial and Woodbury Financial, Inc are not affilated entities.

From: McNair, Michael [mailto:McNair.Michael@principal.com]
Sent: Tuesday, June 23, 2009 10:24 AM
To: Comments, Public
Subject: Expansion/non securities

I have been a licensed representative for 40 years and am still very active. I am opposed to the expansion involving non securities by FINRA. We have plenty of regulation at the state level and I see nothing but confusion for all involved if this is allowed to happen.

Best regards,

Michael J. McNair, CLU
mcnair.michael@principal.com
Office: 402-434-5920
Cell: 402-430-9033
Fax: 402-434-5927

appropriate counsel or other advisors on all matters pertaining to legal,
tax, or accounting obligations and requirements.

From: McNeely, Tom [tmcneely@firstbankersbanc.com]
Sent: Monday, June 29, 2009 3:59 PM
To: Comments, Public
Cc: Bretthorst, Ken; Lanigan, James; Garrison, Phil
Subject: Comments in response to Regulatory Notice 09-25

COMMENTS ON PROPOSED SUITABILITY and KNOW YOUR CUSTOMER RULES

2111(b)(1) "if the institutional customer affirmatively indicates that it is willing to forego the protection of customer-specific obligation of the suitability rule"

This provision is useless since the institutional customer has no incentive to forego the protection. In addition, most institutional customers are unwilling to provide disclosure of investment portfolios, tax status and other information for competitive reasons. The proposed rule does not provide guidance on how a firm can make a suitability determination if the customer declines to provide the necessary information. A firm is placed in a position where it is impossible to comply with Rule 2111.

2111(b)(2) "the member or associated person has a reasonable basis to believe that the institutional customer is (A) capable of evaluating investment risks independently... and (B) exercising independent judgment in evaluating the member's or associated person's recommendations."

This provision is a challenge for the member and associated person to document compliance. How does a member firm document the institutional investor's capability? Is it based on education achievement or years of investment experience? Do we accept the statements of the customer's representative? If the institutional account has several persons buying for the account, must the capability and independence be documented for each person?

2090 "use due diligence, in regard to the opening and maintenance of every account...

When maintaining the essential facts concerning the customer, must the dealer as the customer to confirm the "essential facts" at each transaction. It would be helpful to provide time frames, such as annually, every three years etc. It will be particularly difficult to document the due diligence actions on institutional customers who make frequent trades.

Thomas McNeely, Senior Vice President

FIRST BANKERS' BANC SECURITIES, INC.

Direct 314-835-4916
Toll Free 888-726-2880

Fax 314-835-1217

1714 Deer Tracks Trail, Suite 110,

St. Louis, MO 63131

From: jmcpartland@truenothcompanies.com
[mailto:jmcpartland@truenothcompanies.com]
Sent: Tuesday, June 23, 2009 10:45 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

James McPartland
421 4th Avenue SE
Cedar Rapids, IA 52401-1901

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. DON'T DO IT!

FINRA has a job to do-DO THAT! Help the consumer avoid fraud and deceit in the sale of securities so that our markets are not manipulated by those who prey on others.

FINRA should not be wasting efforts and resources on trying to be all things to all people. Do your job!

Sincerely,

James McPartland

Illinois Department of Insurance

PAT QUINN
Governor

MICHAEL T. McRAITH
Director

June 29, 2009

Via Electronic Mail

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

RE: Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

The Illinois Department of Insurance (IDOI) welcomes this opportunity to comment on FINRA's Regulatory Notice 09-25 regarding the above-referenced proposed FINRA Rules. In particular, IDOI wishes to address FINRA's request for comment on expansion of suitability obligations to all recommendations of investment products, services, and strategies made in connection with a FINRA member firm's business, regardless of whether the recommendations involve securities.

The current economic crisis illustrates that the rigors of state-based insurance regulation protect consumers from the collapses that echo through other financial sectors. State regulators oversee an insurance market that is by far the largest and most profitable in the world.

Simply because an individual retains a dual license, *e.g* insurance and securities, does not render that individual subject to dual regulation on each transaction. FINRA does, of course, license broker dealers and other parties to securities transactions. FINRA, however, does not have the authority to regulate the conduct of professionals involved with matters unrelated to securities. Neither the Securities Exchange Act of 1934 (the Act) nor FINRA by-laws contemplate FINRA regulation of individuals engaged in transactions unrelated to the business of securities. *See, e.g.,* 15 U.S.C. §78o-3(g) (prohibiting membership in a registered securities association by any person who is not a registered broker or dealer); FINRA By-Laws, Article III, §1 (restricting eligibility for membership to registered brokers or dealers "authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business."). Accordingly, any attempt by FINRA to regulate activities not related to the field of securities would likely fail to obtain approval by the SEC and should be avoided. *See* 15 U.S.C. §78s(b)(2) (stating that the SEC shall only approve a proposed self-regulatory rule if it is consistent with the requirements of the Act).

Further, even if FINRA improvidently extended a suitability rule to affect the business of insurance, FINRA members would still be bound by any and all applicable state insurance regulations. *See, e.g.,* NASD Notice 98-86 (reminding members that variable contracts are insurance contracts subject to

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regulation under state law and that an individual who sells a variable contract must be registered with the SEC, state insurance regulator, and NASD). The resulting unnecessary and duplicative regulation by FINRA of the sale of insurance products would not only burden your members but also detract from the effective supervision of insurance products already afforded by state insurance regulators. FINRA's suitability rule-making should be limited to oversight of securities and thereby exclude indexed annuities and other insurance products.

IDOI supports stringent suitability standards and enforcement for insurance products. We also support coordinated and mutually supportive interaction between functional regulators, particularly those with overlapping responsibility. To be clear, we appreciate and value a constructive working relationship with other functional regulators, including FINRA, and look forward to enhancing that collaboration.

Sincerely,

Michael T. McRaith

100 West Randolph
Suite 9-301
Chicago, Illinois 60601-3395
(312) 814-5559
insurance.illinois.gov

From: Roy Mears [mailto:roymears1@gmail.com]
Sent: Thursday, June 25, 2009 4:02 PM
To: Comments, Public
Subject: Expanding Scope of FINRA

Gentlemen:

I am definitely not in favor of expanding the scope of the FINRA to go outside the securities area that they were created to regulate. They should stick to and improve what they are doing and not expand their control over other areas that are already well regulated by the individual states. No matter how many rules you make and how many hundreds of people you have to hire to enforce those rules, an enhanced bureaucracy can never be the answer to unscrupulous actions by selfish and dishonest practitioners.

Keep growing and improving in the securities area, esp. in areas of education.

Roy Mears
Insurance Agent
Lubbock, TX

From: S Medler [mailto:smedler@mac.com]
Sent: Thursday, June 25, 2009 2:30 PM
To: Comments, Public
Subject: PLEASE CONSIDER!

As STATE licensed insurance professional and registered representative, I am writing to ***object*** to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I am deeply concerned over FINRA and government in general encroaching more and more into businesses. FINRA does not need to have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

We have enough laws on the books. As the SEC said itself what they NEED IS THE RESOURCES TO ENFORCE RULES ON THE BOOKS ALREADY!!!! (EXAMPLE = MADOFF). I have had 35 years experience in both BANKING and INVESTMENTS; all at the consumer level. It amazes me that we keep passing laws the hinder commerce AND consumer protection while MISSING the really large fish (MADOFF). PLEASE turn your resources to discovery of problems and not more mindless useless paperwork enforcement.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of ***state insurance*** departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

I urge you ***not*** to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

From: Meinhart, Walt [mailto:Meinhart.Walt@principal.com]
Sent: Tuesday, June 23, 2009 8:32 PM
To: Comments, Public
Cc: govermentrelations@naifa.org
Subject: Regulatory Notice 09-25

To FINRA and other interested and affected parties:

FINRA's Regulatory Notice #09-25, requests input from financial professionals regarding FINRA's interest in expanding its regulatory authority to cover non-securities related financial transactions.

This intent is totally unnecessary and absolutely absurd!!!! The financial services industry and those who are served by it do not need any ***additional*** regulatory authority exercised over it by FINRA or any other regulator or agency.

What we do need is for those who already have such authority to exercise it in a comprehensive and expedient manner.

I am a 33 year veteran of the financial services industry. I hold life, health, and series 6, 63, 7 and 26 licenses. I hold CLU, ChFC, and FIC designations. I have attained high levels of production, including many years at the MDRT levels, and have earned much high recognition by my companies. I like many others have never violated any laws, ethical standards, or compliance regulations. I and thousands like me serve our clients, customers, and our companies well. We **do not need FINRA adding another layer of regulatory authority over us.**

What is needed is for those who already have various types and levels regulatory authority to do their jobs!!!! Violators need to be prosecuted and penalized severely for their actions.

Let's not spend more money giving FINRA more authority. Let's make certain that the existing regulatory authorities do their jobs and have the resources and the personnel needed to enforce the existing laws and regulations!!!

Respectfully Submitted,

Walt Meinhart, CLU, ChFC, FIC

Walter F. Meinhart, CLU, ChFC
Development Director
Princor Registered Representative

Principal Financial Group
Northwest Business Center
5665 Meadows Rd., Suite 350
Lake Oswego, OR 97035
503-620-6266
503-351-1201 (cell)

From: Menchhofer, Owen [mailto:Owen.Menchhofer@infarmbureau.com]
Sent: Thursday, June 25, 2009 3:46 PM
To: Comments, Public
Subject: opposition

I am a licensed registered representative. I oppose FINRA's move into expanding suitability recommendations into areas other than those involving the sales of securities.

Thank you for your reconsideration in this matter.

Owen Menchhofer, LUTCF, CSA
Registered Representative/
Securities & Services offered thru
EquiTrust Marketing Services, LLC
225 South East Street
Indianapolis, IN
317-692-7189, Member SIPC
EquiTrust Marketing Services is not an
affiliate of Indiana Farm Bureau Insurance

From: Metzger, Brian [mailto:Brian.Metzger@crump.com]
Sent: Friday, June 26, 2009 3:20 PM
To: Comments, Public
Subject:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. At this time we the professionals working in this market place, already follow strict standards of suitability and need no additional requirements to cover suitability issues. I ask that you reconsider this recommendation and that you (FINRA) focus on more pressing needs not those of additional suitability requirements.

Brian J. Metzger
Sales Manager - PPN - National Accounts
CRUMP Insurance Group, Harrisburg Pa.

Phone: 717-657-0789 x4349
877-270-5592 x4349
Fax: 717-703-4849

Registered Representative
PJ Robb Variable Corporation
Member FINRA

From: Mgump6@aol.com [mailto:Mgump6@aol.com]
Sent: Tuesday, June 23, 2009 6:03 PM
To: Comments, Public
Subject: FINRA regulatory notice 09-25

I am a 30 year vetern of the insurance and financial service industries. I am strongly opposed to expanding Finra's suitability obligations to recommendations that do not involve securities. Neither Finra nor borker/dealers have the resources to oversee non securities transactions and Finra's authority should not be expanded to include non security products and securities. Non securities products are already regulated by each state dept of insurance. Why double up the effort and cause conflict. Thank you

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From: Dave Middaugh [mailto:dave@damiddaugh.com]
Sent: Thursday, June 25, 2009 3:56 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I have been a licensed insurance professional for 39 years. For a large number of those years I have been a registered representative. My reason for writing is that I vehemently object to FINRA expanding FINRA's suitability obligations to recommendations that do not involve securities.

I've worked, over the years, with our State Insurance Department to aggressively pursue individuals who use deceptive and misleading sales practices, and to prosecute them to the full extent of the law. In fact, I was the fund raising chairman to fight an initiated measure concocted by a group promoting rebating, which we were successful in defeating and successful in removing the licenses from the promoters. I strongly object to people messing in my pond.

I just as strongly object to your attempt to reach into an area for which you do not have jurisdiction – that area being where securities are not involved. Neither FINRA nor broker/dealers have the expertise specific to insurance products or the resources necessary to oversee non securities transactions. FINRA's authority should not be expanded to include insurance and other non-security products and services.

Insurance products are already the subject of comprehensive regulation at the state level and at the national level through the National Association of Insurance Commissioners. FINRA being involved with these products would result in conflicting and confusing regulatory requirements which would detract from the goal of consumer protection.

In addition, our lawmakers are currently debating issues concerning the standard of care, which broker/dealers and investment advisors owe to their clients and are considering whether such standards should be expanded or changed going forward. It would be totally inappropriate and untimely for FINRA to expand or revise current suitability requirements while this debate is underway since many other changes may be made in the very near future.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Sincerely,

David A. Middaugh, CLU, AEP
Registered Representative

Middaugh & Associates, Inc.
1019 5th Avenue South
PO Box 2543
Fargo, ND 58108

Phone: 701-235-7023
Fax: 701-280-9607

From: Joe Mignogna [mailto:jmignogna@andraos.net]
Sent: Tuesday, June 23, 2009 11:07 AM
To: Comments, Public
Subject: FINRA Suitability Regulations that do not invlive Securities

I have been an insurance professional for over 30 years. The change in suitability regulations has become a tremendous burden on everyday life. Of course, I want all citizens to be treated ethically but this latest development is more of the same. Please, do not allow this!
Thank you,
Joseph Mignogna

From: Mihal, Shawn [SMihal@gaadvisors.com]
Sent: Friday, June 26, 2009 2:35 PM
To: Comments, Public
Subject: Regulatory Notice 09-25: Proposed Rules 2111 Suitability and 2090 Know Your Customer

Sent Via Email: pubcom@finra.org

June 26, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-25: Suitability and "Know Your Customer"

Dear Ms. Asquith:

We are submitting this letter in response to a request for comments by the Financial Industry Regulatory Authority ("FINRA") published in Regulatory Notice 09-25 titled *Suitability and "Know Your Customer"*. Great American Advisors®, Inc. ("GAA") appreciates this opportunity to respond to FINRA's request for comments. While GAA understands and supports FINRA's efforts to work diligently toward the creation of a consolidated rulebook addressing rules employed by both the National Association of Securities Dealers NASD and New York Stock Exchange NYSE, such consolidation, in certain cases, creates substantial hardships respective to the member firms obligations prescribed by Proposed Rules 2111 Suitability and 2090 Know Your Customer (collectively referred to herein as the "Proposed Rules").

A review of the Proposed Rules indicates that many well thought provisions from the existing rules have been transitioned and amended to provide investor protection in an efficient and logical approach. GAA commends FINRA and supports the consolidation of multiple rules and notices into one uniform rule and the clear exemption for institutional customers, providing such exemption extends to group retirement plans. GAA also supports material items included in the Proposed Rules designed to promote fair dealings with customers and prohibit the recommendation of security(ies) purchases beyond the customers financial ability.

GAA, however, is concerned with other material items included in the Proposed Rules. Consequently, GAA opposes several of the provisions instituted in the Proposed Rules and FINRA's suggestion to expand suitability obligations as discussed herein.

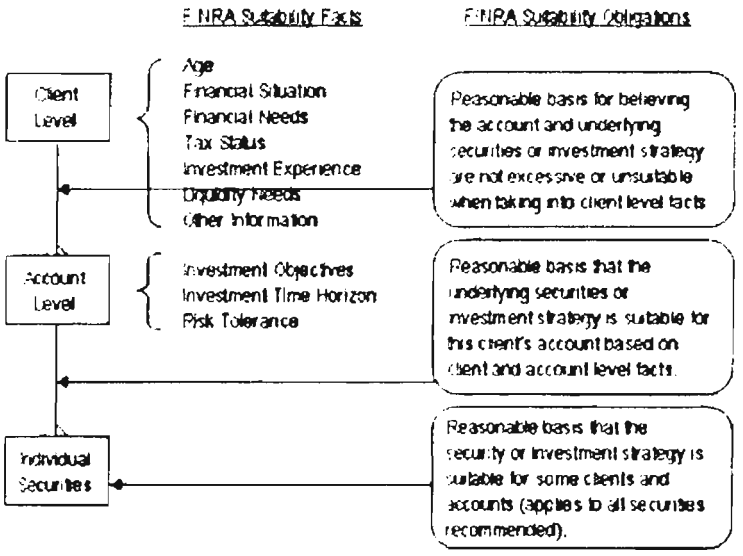
GAA is concerned with the implications of the Proposed Rules relevant to the ongoing debate about the appropriate standard of care owed by a financial advisor to a client. It is unclear at this point how these issues will be resolved by Congress and other policymakers. However, such resolution has the potential to fundamentally impact the application of the Proposed Rules. Subsequently, member firms and their associated persons may incur substantial costs to comply with the Proposed Rules by creating new written supervisory procedures, amending, creating, and printing new forms and applications, and

reprogramming databases or developing new electronic systems designed to facilitate the processing of securities transactions consistent with the Proposed Rules. As a result, we urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

GAA strongly opposes FINRA's suggestion to expand 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. Such proposal would materially expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. Subsequently, FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, and contradictory regulatory requirements that do not advance the goal of investor protection. GAA's Representatives often operate outside business activities for the sale of insurance and other non-securities products. These small businesses entrepreneurs would find the suggested expansion of suitability obligations to be a significant financial hardship.

GAA has some concern that the Proposed Rule, in its current form, may lack clarity and allow for inconsistent interpretation. Subsequently, an individual may interpret the evaluation of suitability facts are applicable only at the transaction or individual security level. However, in many cases, that the evaluation of suitability facts must be considered and judged based on all recommendations included in the portfolio of securities purchased. If it is indeed FINRA's intention to evaluate suitability facts only at the transaction or individual security level, then GAA feels that this rule may result in certain unintended consequences for investors who may have several valid, but competing investment objectives that are best met by a fully diversified portfolio or the establishment of different account types made up of securities of varying degrees of liquidity, risk, and anticipated holding periods. A client's investment time horizon, liquidity needs, and risk tolerance are important considerations; however, we believe that circumstances exist when such factors and considerations are best judged at the portfolio or account level.

Perhaps an illustration of how we view the application of these Proposed Rules and how suitability facts and obligations would be gathered, recorded and evaluated would better illustrate our concern.



Should the Proposed Rule be interpreted such that suitability facts are applied at the security or transaction level, essentially the lowest common denominator, then the basic investment principals of diversification would no longer work, a mass failure of member firms monitoring and evaluation tools would occur which may lead to significant confusion by Registered Principals trained to approve the opening of new accounts.

GAA is concerned with the expansion of the suitability review to include information known by the broker/dealer. Like other independent contractor broker/dealers, GAA's financial advisors operate their own small businesses in communities throughout the country. In certain circumstances they can compete with other financial advisors who may be registered with the same broker/dealer. As a result, it is possible for an independent broker/dealer's records to include information about a client that was collected by one financial advisor, but unknown to the client's current financial advisor. The Proposed Rule would require independent broker/dealers to engage in a search through all of their internal client records along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. We believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection.

We are pleased to have the opportunity to provide these comments and hope that they can assist FINRA in developing rules that are fair and appropriate for all members firms. Should you have any questions, please feel free to contact me at (513) 412-1531 or via email at smihal@gaadvisors.com.

Shawn M. Mihal
Chief Compliance Officer
Great American Advisors, Inc.
Member FINRA and SIPC
An SEC Registered Investment Advisor
(800) 216-3354 Extension 11531
Facsimile: (513) 412-5142
Email: smihal@gaadvisors.com

From: Charles C Mihalek [cmihalek@mis.net]
Sent: Monday, June 29, 2009 4:54 PM
To: Comments, Public
Subject: Know Your Customer Rule 2111

Dear Ladies and Gentlemen: I have been practicing in the securities law area for many years. In my opinion there is a "failure to communicate" between client and stockbroker. The industry and the regulators make assumptions about basic components on the financial regulatory system that are unfounded. First of all, retail investors can not understand or comphrehend their monthly statement. If that is true, and it is, then how can they complain or know when or how to complain? Secondly, the vocabulary of Wall Street is cleverly intertwined around everyday words, like "moderate" "risk" or "moderate" " growth". The emphasis has been on qualitative risk disclosure when it can and should be on quantitative risk disclosure. None of the words used in the Investment Objectives Section of the New Account Form which the Customer does not see or sign mean something different than their plain meaning or are ambiguous. Instead of saying "Are you a Moderate Risk investor ?" you should be asking "Are you willing to risk up to 20% of your entire portfolio in any given year?"

Our clients are mostly retired blue collar high school educated couples in their late 50's or early 60's. Except for employee stock plans they have no experience in the market. Why do the regulators permit Stock Brokers to list time spent in employee stock plans as stock market experience on the New Account Form? It is unfounded, baseless and a perversion of the duties of a stock broker to classify knowledge and experience improperly.

The securities suitability "problem" should not be solvable by selling all your clients the same 5 or 10 mutual funds with a 4 or 5 percent commission. If stock brokers who recommend the purchase of mutual fund A shares to their client have a fiduciary duty [to put the interests of their client ahead of their own or their firm's] then why is the stock broker not REQUIRED to tell the client about the existence of low cost no lode funds with the identical makeup or low cost EFT's? There is a contradiction in the law of fiduciary duty that is not being addressed---- repectfully, it is being ignored or swept under the rug.

In the last 5 or 10 years I have noticed that Bank Trust Depts generally perform their fiduciary duties much better than stock brokers. I suspect this is true because they are NOT incentivized product salesmen, but have a clear sense of duty and truly putting their beneficiaries first in the scheme of things. Any suitability rule that does not require the broker to treat the client as a beneficiary of a fiduciary relationship is in my opinion defective. I do not refer to those transactions which are purely mechanical (where the broker makes no recommendation and is truly an order taker].. The Order Tickets are mismarked in most of the cases we handle as "Unsolicited" so as not to trigger whatever supervision there is. If the ticket is mismarked, then this rule is meaningless. There seems to be no penaltities in arbitration or anywhere for mismarked tickets. Customers do not understand the significance of the ticket or the "Solicited" or " "Unsolicited" and the broker keeps that significance hidden from him .

In my opinion the proposed newrule does not go far enough to protect customers especially seniors who are easy targets for unprofessional, poorly trained stock brokers. .

Sincerely,

Charles C. Mihalek, Esq.
Charles C. Mihalek, P.S.C.
510 First National Building
167 West Main Street
Lexington, KY 40507
(859) 233-1805 Phone
(859) 233-7994 Facsimile

From: Roger Miles [mailto:rogermiles@nts-online.net]
Sent: Thursday, June 25, 2009 5:27 PM
To: Comments, Public
Subject:

Dear Ms. Asquith, I am a member of NAIFA. I have been in the insurance business for 45 years and I have sold both securities and non-security products. I strongly oppose expanding the scope of FINR's suitability rules and obligations to include recommendations that do not include securities. Having focused on fixed insurance products for many years, I'm aware that insurance and other non-securities products are already subject to regulation by "State Regulators", adding FINA regulatory requirements is massive over kill. It would be best if the SEC, FINA and the policymakers on Capitol Hill didn't reverse the current suitability requirements already set up by State Regulators.

Please leave it to the State Regulators concerning suitability rules for fixed products.

Respectfully,

Roger Miles

Roger Miles,LUTCF
Miles Financial Services,Inc.
3812 34th St.
Lubbock, TX 79493
800-234-1668

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WWW.MFS.MIQUOTES.COM - To Purchase Insurance Online

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Registered Representative
Securities Offered through First Western Securities Member FINRA/SIPC

From: Mark Miller, LUTCF [mailto:markmiller@aicinvest.com]
Sent: Tuesday, June 23, 2009 5:48 PM
To: Comments, Public
Cc: NAIFA Government Relations
Subject: Opposition to Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities

To Ms. Marcia E. Asquith,

I am a registered representative, who sells both securities and non-securities products. I am firmly opposed to the expansion suitability obligations to recommendations that do NOT involve securities. This is nothing more than a power grab in an attempt to circumvent state consumer protection regulations that are already on the books in every state in the country. FINRA has already overstepped its bounds on the regulation of indexed life and annuity products as a security, a move which I feel confident will be overturned by the courts. This is yet another attempt to reach into the realm of state regulation, which is inappropriate.

I am firmly in favor of prosecuting to the fullest extent of the law those who promote unsuitable sales, and engage in misleading sales practicies. However, FINRA does not have jurisdiction over products and services that are not securities, no matter how egregiously they are marketed. This is just not your territory, so you should stay out of it.

Were there inadequate state regulations, and given the intent of consumer protectionism, I would not be as opposed to this proposal as I am. However, there currently exists more than adequate regulation, enforcement and penalty provisions within the states to deal with the problem this proposal attempts to address.

Please note my objection.

From: ebp@embarqmail.com [mailto:ebp@embarqmail.com]
Sent: Tuesday, June 23, 2009 11:55 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Owen Miller
905 Melody Ln
Alexandria, MN 56308-1201

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a 46 year agent in the life insurance business and former registered representative (Series 1) I have seen changes in regulations both on national and state levels, but this regulation is not needed. Those in the business who do not sell to the needs with careful consideration regarding the individuals total financial picture need to be punished.

Sincerely,

Owen Miller

From: richard.miller@nmfn.com
Sent: Monday, June 29, 2009 2:42 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

To whom it concerns:

I am a financial representative with both insurance and securities licenses and I have practiced for the past 17 years. I certainly don't have an argument against suitability, and frankly doing what is best for the clients is good for my career. That said, the proposed rule change goes too far when FINRA attempts to expand suitability obligations to services and strategies made in connection with a firm's business regardless of whether recommendations involve securities. We already have plenty of regulation and oversight with respect to insurance and non-variable securities products and services. The proposed wording suggests the creation of an additional layer that is unneeded and a duplication of oversight provided by the States, NAIC, insurance companies, etc. I respectfully urge you to reconsider your far-reaching proposal. It's not necessary.

Richard L. Miller
Financial Representative
310 N. 3rd St., Yakima, WA 98901
Ph (509) 457-1660, Fx (509) 248-3552, Cell (509) 910-5000
richard.miller@nmfn.com

www.nmfn.com\richardmiller

From: Millette, John [mailto:John.Millette@imgfinancialgroup.com]
Sent: Tuesday, June 23, 2009 12:36 PM
To: Comments, Public
Subject: Proposed Expansion of Suitability Obligations

I am a registered representative and a licensed insurance professional. This is to express my strong objection to expanding FINRA's suitability obligations to recommendations that do not involve securities.

F. John Millette, CLU, ChFC

IMG Financial Group

One Greenway Plaza, Suite 1010

Houston TX 77046

713.622.1150.133

713.622.3679 fax

john.millette@imgfinancialgroup.com

www.imgfinancialgroup.com

IMG Benefits Group, LLC- Employee Benefits

IMG Capital Management Group - Fee Based Money Management

Investment advisor rep and registered representative of Securian Financial Services, Inc. Member FINRA/ SIPC

IMG Financial Group is independently owned and operated.

From: Chris Milsom [chris.milsom.cqzg@statefarm.com]
Sent: Thursday, June 25, 2009 6:38 PM
To: Comments, Public
Subject: Proposed FINRA Suitability Obligation Changes

I am a licensed insurance agent with almost 20 years of experience and I am concerned as anyone about unsuitable sales practices that are misleading and harmful to consumers. Nonetheless, I cannot support the expansion of FINRA's suitability obligations to non-security products. Insurance and financial professionals are already regulated by a host of state and federal agencies some of which seem to contradict each other sometimes.

One example I am aware of is that in PA, when discussing annuity products, we are not supposed to initiate a conversation with a customer about the PA Guarantee Fund since that could be construed as influencing a customer's decision to purchase the product by implying the safety of the annuity, yet in MD, our agents are told they MUST tell customers about MD's Guarantee Fund.

Since the current economic crisis started, everyone has been looking for a way to prevent this sort of thing from happening again by passing more and more regulations. It seems to me that reports of some of the most egregious scandals, like the Bernie Madoff fiasco point to a breakdown of our current regulatory system and a need to perhaps clean house within the agencies that already exist to monitor and protect the public like the SEC, and the various agencies that are supposed to be regulating bank and investment companies.

I understand that President Obama is establishing an office that is supposed to try to coordinate all these various insurance, banking and securities issues. Perhaps that will be a more helpful direction.

Thank you.

Chris Milsom, LUTCF
State Farm Insurance A
Providing Insurance & Financial Services

2 College Ave, P.O. Box 488, Mountville Pa 17554
717-285-3904 Fax : 717-285-4331
www.ChrisMilsom.net

I am a licensed insurance professional. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

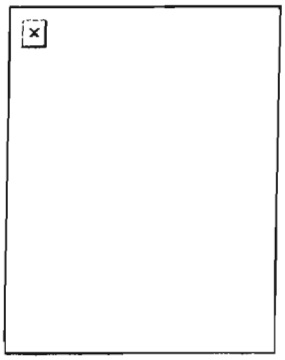
I ***firmly*** believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should ***not*** be expanded to include non-securities products and services.

Another reason why the expansion of FINRA's suitability obligations is unwise is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

For the reasons stated above, I urge you ***not to expand*** FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for considering my views on this issue.



Jay Mitchell, LUTCF, FSS, MSM
Captain USAF (Ret)
233 W. University Dr.
Mishawaka, IN 46545
(574) 247-3014 office
(574) 247-3015 fax
(866) 456-3554 toll free

From: dwmontemurro@comcast.net [mailto:dwmontemurro@comcast.net]
Sent: Tuesday, June 23, 2009 10:11 AM
To: Comments, Public
Subject: Non securities transactions

Please hear the voice of those that oppose the expansion of FINRA rules to non securities transactions. Our clients and broker dealers would be inundated with minutia and paperwork that is uneccessary. We would be limited in our ability to provide advice, without additional documentation. Our forms currenlty already include suitability recommendations. This type of change could result in more advisors being unwilling to work without collecting a fee, or become more transaction minded than advice minded. Please do not create extra work and confusion for the client and advisors as well as the broker dealer. This will cause confusion and delay.

Sincerley,

David Montemurro

ERROLD F. MOODY JR.
PhD, MSFP, LLB, MBA, BSCE
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Author, *No Nonsense Finance*, McGraw Hill
Master of Science in Financial Planning
Registered Investment Adviser
B-1 General Contractor
Real Estate Broker
WWW.EFMoody.com
EFM@EFMoody.com

June 27, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA 1735 K Street, NW
Washington, DC 20006-1506

RE: **Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations**

I have the unique background of teaching almost all the securities licensing courses in the past (4, 6, 7, 86, 22, 24, 27, 63, etc) as well as acting as an securities arbitrator, expert witness and more. A resume is attached for validation. Beyond that I am almost assuredly the only one who replies who definitively defines suitability on a real world application, not just with words. .

I have also approached the NASD/FINRA for over 15 years in regards to investor protection via broker knowledge. Without such fundamental training, suitability cannot be determined.

I note that the material states, "NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405,4 addressing know-your-customer obligations, are critical to protecting investors."

While an acceptable plaudit, it has no meaning. None of the brokers via a series 7 (the most common broker license) have ever been taught the fundamentals of investing. I have independently taught that such fundamentals include alpha, beta, standard deviation, diversification (by the numbers), correlation, risk of loss and more. I estimate that over 85% of RIAs are equally dumbstruck by even the most rudimentary elements of risk and reward. In such regard, how is one to "know thy customer???" The agent can get all types of info from a naive and unsophisticated investor and then what?- protect them from what? Unknowledgeable competitor advisers? Well, you won't have anyone left.

FINRA also seeks comment on whether it 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.

That goes without saying. Effectively all the investment plans, retirement analyses and certainly any variable life and annuity illustrations I have seen to date, regardless of the size of the B/D, are deceptive at best and fraudulent at worst. The prime example involves the use of the term and numbers of standard deviation that is used to supposedly indicate something reflective of what risk is (wrong). Almost all the computerized plans are incorrect and deceptive. AIGs index life policy is backtested to use a 17.53% annualized return each year for the next 50 years. FINRA will now demand that indexed products be suitable? And no broker is trained on the use of a financial calculator? Well this will be interesting.

As far as I am concerned, such activity, which invariably includes any type of retirement income plan, budgeting and so on, has always fallen under the purview of suitability since the selection for the investments to be used requires scrutiny of not only how it works for the intended purpose, but whether they will work at all. So why not expand the suitability limits? It will make my job easier overall in showing the limited to nil competence of the brokerage community. But you need to realize that it will further denigrate the status of FINRA for refusing to instruct licensees on the fundamentals.

Information Gathering Regarding the Proposed Suitability Rule
Proposed FINRA Rule 2111 contains a number of minor changes regarding the gathering and use of information as part of the suitability analysis. For instance, the information that must be analyzed in determining whether a recommendation is suitable would include not only information disclosed by the customer in response to the member firm's or associated person's reasonable efforts to obtain it, but also information about the customer that is "known by the member or associated person." The proposal also requires members or associated persons to make reasonable efforts to obtain more information than is explicitly required by NASD Rule 2310 (*e.g.*, age, investment experience, investment time horizon, liquidity needs and risk tolerance).

The words are nice but investment experience is a wasted request when put into the real world. As stated to Shapiro years ago, consumers may have bought various investments over the years but generally without any true insight to what was going on or *what they should have done.* I repeat the fact that there is literally no consumer who knows what diversification is by the numbers. If you cannot determine diversification you cannot determine risk. If you cannot determine risk, you cannot even remotely identify suitability. Of course I took liberty with the comments about the knowledge of diversification by consumers but not by more than 0.0005%. That said, the understanding to risk is nil.

Investment experience CANNOT be used as a guide to what they should have done over the same period. To have uneducated brokers use this as a rationale or crutch is a breach of duty.

It is within this same commentary that 'risk tolerance' is a joke. I have NEVER seen any type of investment plan that has defined risk properly. A recent major B/D firm- as with effectively all others- has no clue to risk tolerance and to suggest that they can use they can transfer the risk tolerance to an individual who cannot properly spell it is ludicrous.

Further: Whether the firm or associated person has a reasonable basis to believe that the institutional customer is capable of analyzing the risks of investments independently, both in general and with regard to particular transactions and investment strategies involving a security or securities;

And how do you propose to determine such capability?
Because the "FINRA Institute at Wharton provides an understanding of the foundation, theory and practical application of securities laws and regulation. Participants learn from Wharton faculty, senior regulators and industry practitioners, and earn the distinct designation of Certified Regulatory and Compliance Professional (CRCP) upon successful completion of the program"?

And the point is what? There is no practical application of use of product. There is nothing on a financial calculator. After all, you would have all know about the fraud of a 17.53% projection and would have curtailed it, right??

No matter, Professors Herring and Diebold of ***Wharton*** noted this recently when asked if risk can be measured accurately: Dick Herring: "I think the last year shows that we can't, that there are lots of things we can't quantify very successfully and that we became overconfident in the things we *could* quantify. We've made great strides in risk analysis, risk measurement, and aggregating risk. But we've tended to focus most of those efforts on things that are relatively easy to manage. And even some of those relations broke down. We simply didn't have enough data. Our techniques were not good enough. We weren't using enough forward information and, unfortunately, this crisis has blame that can be shared across the entire spectrum of participants, from regulators to participants in securitizations and even to risk managers themselves.

Francis Diebold: I think that's right. That reminds me of our project on the known, the unknown, and the unknowable that we've done here at Wharton at the Financial Institutions Center in conjunction with the Sloan Foundation. What we focused on and really came to realize more intensely was that there's a whole spectrum of risks ranging from market risk to credit risk to operational risk to legal and reputational risk and things beyond that. Some are comparatively easy to model, which isn't to say they are easy, but they're comparatively easy. Others are really challenging and basically we're not good at at all."

But the *fundamentals of risk analysis* can be taught. However not to brokers since one needs a financial calculator. Such capability has never been required for licensees.

Supposedly, 'The proposed FINRA know-your-customer obligation, proposed FINRA Rule 2090, captures the *main ethical standard* of NYSE Rule 405(1). Firms would be required to use due diligence, in regard to the opening and maintenance of every account, to know the essential facts concerning every customer (including the customer's financial profile and investment objectives or policy'.

I will agree that the words are acceptable. But the whole emphasis on know the customer is a fraud due to the continuation of a severely bankrupt knowledge base to any licensee from the time I started instruction in the 1980s to now. The position taken in the mid 90s by NASD that increased knowledge would slow sales and would never be allowed remains. Shapiro's statements that FINRA is a procedural entity and not a substantive one (2004) continues to reflect the dearth of ethical responsibility to consumers. Brokers do not even know what diversification is. .

Finra has provided nice words. The theory is valid. But it cannot back them up with any industry elements since it refuses to even expose licensees to any of the fundamentals of investing. Add any credentials from Wharton or Harvard or whatever. Compliance over entities that are effectively clueless to the proper use of product is absurd. Unless and until the necessary knowledge is mandated, changes in a rule like this per se will provide little, if any, benefits to the consumer.

Why bother??

Errold F Moody Jr

Errold F. Moody Jr.
2410 W Ave 135
San Leandro, CA 94577
Phone and Fax 510 352-4127
Marina Offices 510 357-1554

SUMMARY OF QUALIFICATIONS

Over 37 years of hands-on experience as a financial and real estate consultant to various title companies, corporations, CPA's, attorneys, partnerships, credit unions, non-profit organizations and individuals. For the last 25 years, major focus has been in individual fee financial planning. Expertise has covered investment analysis and monitoring, estate and pension planning, living trusts, charitable gifting, sales and management (stocks, bonds, partnerships, insurance, REIT's and mutual funds), retirement planning, life and disability insurance review, security arbitrations, taxation and national and international economic analysis. Offer expert testimony on brokerage and financial issues. Have written and taught extensively in the field.

Authored the largest (4,000+ pages and 1,650+ links) and most comprehensive independent financial planning site on the Internet (EFMoody.com) designed for consumer education and knowledge.

Author of No Nonsense Finance by McGraw Hill, (2004)

Author of "Practical Investment Theory and Application"- the only investment continuing education course ever approved by the California State Bar (2008)

Author of "Practical Life Insurance and Annuities Analysis and Application"- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Author of "ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity", Marquette University Law School (2009)

PROFESSIONAL EXPERIENCE

1981- 1997: Dearborn Financial Institute & Securities Training Corporation. Instructor for the Series 6 (mutual funds, variable life and annuities); Series 7 exam (stocks, bonds, options, economics, security regulations); Series 22 (limited partnerships, personal and corporate taxation); Series 24 (General Securities Principal); Series 26 (Mutual Fund Principal); Series 63 (multi state license); Series 52 (Municipal Securities); Series 62 (Corporate securities) and insurance, special education programs and securities continuing education courses.

1977- 1999: Professor/instructor for University of California at Berkeley and Irvine, University of San Francisco, Orange Coast, Santa Ana, Coastline and Scottsdale Community Colleges. Includes MBA course in Real Estate Finance, courses for the UC certificate programs "Professional Designation in Financial Planning" and "Professional Designation in Investment Real Estate" and specialized seminars.

1987- 1998: Arbitrator with the National Association of Securities Dealers and Pacific Stock Exchange

1995- 2004: A.D. Banker, Instructor in Insurance for continuing education courses in Estate Planning, Managed Health Care, Annuities, Long Term Care, Qualified Retirement Plans, Government Programs and Medicare Supplements, Disability Income, Ethics, Principles of Contract Law, Principles of Agency Law, Taxation of Life

Insurance and Annuities, and Financial Products for Financial Planning.

DEGREES, LICENSES AND DESIGNATIONS

BSCE, LLB, MBA, PhD (Real Estate)
Masters of Science in Financial Planning (Estate Planning Major) Life and Disability Insurance Analyst 0626414 (One of about 30 in California) Certified Financial Planner Registered Investment Adviser (California) California Real Estate Broker California B-1 General Contractor Series 7, 24, 27 and 63 Securities Licenses- inactivated Series 65 Securities License (Multi State Adviser) California Life and Disability License 0626414

ARTICLES and PUBLICATIONS

Authored courses accepted for securities continuing education in financial planning, estate planning, taxation and tax planning, investments and suitability, ethics, retirement planning and insurance and annuities. (1996)

Author of ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity, Marquette University Law School, 2009

Authored the only courses on investments accepted for continuing education by the State Bar of California (1995 and 2008)

"Practical Investment Theory and Application"

Author of "Practical Life Insurance and Annuities Analysis and Application"- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Authored two courses accepted for 4 and 16 hours of continuing education for Certified Public Accountants by the California Board of Accountancy. Previous course accepted for CPA credit in 10 states.

"Advanced Business Continuation and Estate Planning"
"Advanced Financial Planning and Investing"

Authored two real estate courses granting 9 and 21 hours of continuing education by the California Department of Real Estate. Material was used in courses at several colleges including UC Irvine as part of Certificate program.

"Current Concepts of Real Estate and Investing"
"Major Concepts of Real Estate and Investing"

Authored additional courses in Long Term Health Care, College Funding, Business Continuation, Investments, Trustee Selection and Charitable Gifting.

Authored "Arbitrators Guide to Securities" for the Center for Investor Protection

Above material was compiled and offered as text for UC Certificate course in Survey in Financial Planning.

Author a monthly investment and financial planning newsletter- Moody's Review- since 1987.

Author the largest (4,000+ pages and 1,650+ links) and most comprehensive financial planning site on the Internet (www.efmoody.com) designed for consumer education and knowledge. The Web site is noted as a Top Retirement Site by Forbes, Business Week, USA Today, and One of the Web's Most Useful Money Sites by Bottom Line. Has also been linked by Ernst and Young for Financial Planning, Department of Aging for Long Term Care and other sites around the Internet for Real Estate, Retirement, Investments, Long Term Care, Estate Planning, etc. and has been selected by AOL and Netscape as one of their top sites for stocks and financial planning advice, among others.

Have been published/quoted in numerous business magazines (San Francisco Chronicle, California Broker, Investment Adviser, Smart Money, Wall Street Journal, New York Times, Money Magazine, National Underwriter, Consumer Reports, Mutual Funds Magazine, Life Insurance Selling, Parenting Magazine, Realtor Digest, Corporate Finance, Numerous national newspapers, Registered Investment Adviser, Ticker magazine, Orange County Register, etc.) and have been interviewed frequently on local and national radio and TV.

SEMINARS

Have conducted seminars and classes on most financial and real estate issues to Chambers of Commerce, Corporations, Teachers, Union Officials, Securities and Insurance firms, Universities, American Association of Individual Investors, National Association of Personal Financial Advisers, Senior Groups, etc. to groups to 200.

EXPERT WITNESS CASES

During 2005, the following reports were prepared for court or arbitration process.
1. Defendant for libel regarding Viatical settlements. Suit dismissed
2. Plaintiff against American Express and CFP regarding fraud and breach of fiduciary duty. Settled for plaintiff
3. Defendant for sentencing on a Federal Case regarding international bond trading scheme. Reduced sentence.
4.Defendant in alleged illegal trading. Suit dismissed
5. Plaintiff for trust against "bankrupt" annuitant. Settled for plaintiff
6. Continuing effort for plaintiff against CFP and CFP Board of Standards for breach of duty on life insurance sales. $977,000 current proceeds.

2006:
1. Report for defendant on breach of fiduciary duty by a charity.
2. Pro bono filing against CFP with the Florida Department of Financial Services. Department is doing a full investigation at present
3. Report against several insurance companies in New York for breach of duty against fire department personnel regarding defined benefit programs. Ongoing
4. Report against major insurance company regarding retiree sold index annuity instead of taking pension. Ongoing
5. Report for insurance company defending complaint regarding major wealth management firm in New York. Settled
6. Defense for defendant on elderly abuse. Reduced sentence.
7. Plaintiff for beneficiary of 100 year old mother regarding breach of fiduciary duty, negligence, churning, etc.

2007:
1. Report for lawsuit regarding partner in termination of Financial Planning partnership 2. Arbitration on losses sustained by elderly client
3. Report for defense on fraudulent conveyance of real estate properties 4. Analysis for Life Settlement commission dispute.
5. Plaintiff for elderly fraud in Tennessee.
6. Continuing effort against Florida CFP has now initiated formal investigation..
7. Case involving participating insurance contracts written in the late 1940s

2008 Cases

1. Defense for telephone solicitor of debit cards.

2. Report for divorce on cost of long term care for elderly

parent 3. Report against CFP breaching fiduciary duty to clients

4. Report on employee firing by major B/D

5. Consultant for major insurance firm regarding fraudulent/ irresponsible sales.

2009 Cases

1. Report for losses sustained in equities retirement plan.

2. Real Estate fraud

From: Tom Moore [mailto:tomdmoore@sbcglobal.net]
Sent: Tuesday, June 23, 2009 2:27 PM
To: Comments, Public
Subject: Expanded suitability requirements

There is more than adequate oversight of the Registered Reps' activities now. Expanding a suitability requirement for non-equity based products is ridiculous. I ask FINRA to work within the system in existence today. Adding more restrictions, more stipulations, more forms rarely does anything for an investor. Those few individuals who don't do it correctly under today's regulations will not conduct business differently with additional requirements.
Stop this continuous expansion of oversight!

Thank you.
Tom Moore

From: Morse, David [mailto:david.morse@countryfinancial.com]
Sent: Tuesday, June 23, 2009 2:11 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Dear Sir or Madam,

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

While I firmly believe that regulation is needed and proper, FINRA should not be regulating parts of my business not relating to securities. As with most government programs, I believe that your agency, our industry and consumers would benefit by having concise, well written, easily understood, rules, with clear scope and purpose regulating securities. For the industry this would make compliance easier, for your agency this would make enforcement easier, and for consumers better protection due to better enforcement.

Another reason why the expansion of FINRA's suitability obligations is unwise is that insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

All the Best,

David Morse
Country Financial

From: Derrick P Morton [mailto:Derrick_P_Morton@glic.com]
Sent: Tuesday, June 23, 2009 11:38 AM
To: Comments, Public
Subject:

After 23 years as a registered rep and a licensed insurance professional, I have come to the conclusion that less federal involvement and the more state involvement in my business, the better for all concerned. I strongly object to expanding FINRA'a suitability obligations to recommendations that do not involve securities. Insurance products are already subject to comprehensive regulation (at the state level). FINRA's expansion could only muddy the water and create more layers of bureaucracy.

This would impose an additional burden, not only to insurance professionals, but to FINRA and broker/dealers who do not have the resources to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securites products and services.

Thank you for considering my views.

Want to have more organization and control in your financial life? Click on this link to view how you can and call me for an appointment.
http://www.livingbalancesheet.com/flash/v2/Clients_Series6_webHi.htm

Derrick P. Morton, CLU, ChFC
Redbud Financial Group, LLC
1900 NW Expressway, Suite 700
Oklahoma City, OK 73118
(405) 767-1900
http://www.redbudfinancialgroup.com

PlanMember Securities Corporation
Planning your future...today®
6187 Carpinteria Ave. Carpinteria, California 93013 | (805) 684-1199 | (800) 874-6910 | (805) 684-2159 fax

18 June 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington DC 20006-1506

Re: FINRA's Proposed Rule Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

Thank you for the opportunity to comment on the Proposed Rule Governing Suitability and Know-Your-Customer Obligations ("Proposed Rule"). This particular Proposal has far reaching affects on our clients, our registered representatives and your member firms and deserves careful consideration.

PlanMember Securities Corporation (PSEC) is an SEC registered broker-dealer and investment advisor and member of FINRA, providing retirement plan products and services. For over 20 years, the company has been a 403(b) industry leader in personalized retirement planning and investment advisory services. The PSEC sales force is comprised of approximately 350 independent registered representatives, qualified as investment adviser solicitors and operates across 50 states. While PSEC is the broker-dealer of record on greater than 90,000 accounts and is the investment adviser on more than 33,000 accounts, the registered representatives have built long-standing relationships with their clients.

First of all, we oppose FINRA's Effort to Expand Suitability Requirements to Non-Security Investment Products or Services. State and federal authorities already closely regulate the sale of insurance products, investment advisory services, and other products and services. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, we oppose FINRA's suggestion that it expand the 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.

As for the Expansion of Suitability Criteria to Include Portfolio Level Concerns, a client's investment time horizon, liquidity needs, and risk tolerance are important considerations. As such, we would expect FINRA to not only appreciate suitability at the portfolio level, but also at the transaction level as well. A recommendation at the transaction level may not appear to be suitable in and of itself, but when one factors in the client's overall portfolio, the recommended transaction can then be seen as part of a fully diversified portfolio that meets the client's overall suitability parameters. We respectfully request that FINRA consider all unintended consequences for investors and member firms alike as it submits its final Proposed Rule.

We oppose the Expansion of the Suitability Review to Information Known by the Broker-Dealer. Independent financial advisors operate their own small businesses in communities throughout the country. They can compete with other financial advisors who are registered with the same broker-dealer. As a result, it is quite possible for an independent broker-dealer's records to include information about a client that was collected by one financial advisor, but unknown to the client's current financial advisor. The

Proposed Rule would require member firms to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. And, perhaps as an unintended consequence not considered, we believe that this will be overly burdensome on the suitability review process. Under the Proposed Rule, we imagine that the suitability review principal will have to factor in all referenced information, which would significantly delay the processing of a client transaction – especially for firms that are still paper-based. We believe this requirement is simply unworkable, is unlikely to result in a significant improvement in investor protection, and would cause unnecessary delays in processing securities transactions. We, therefore, oppose this aspect of the Proposed Rule.

We also feel that the Proposed Rule is 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. The resolution of this debate has the potential to make the Proposed Rule a moot point. As a result, we urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

To summarize, while independent financial advisors are accustomed to gathering detailed information from their clients and making suitable securities transaction recommendations based on this information, the Proposed Rule's requirements are of concern for three important reasons. First, by expanding the suitability criteria, the Proposed Rule greatly expands the opportunities for plaintiff's counsel and regulators to second-guess a representative's recommendations, and possibly the Principal's approval of the recommendation, with the benefit of hindsight. Second, we believe that suitability is best judged from an examination of the transaction as part of an overall portfolio strategy. However, we are concerned that the Proposed Rule would not provide the proper context to be accounted for as it is currently drafted. Lastly, the Proposed Rule's requirement that recommendations be based on information about the client known to the broker-dealer or associated person would appear to require a transaction-by-transaction review of all customer databases, files, forms and records of the firm and representatives registered with it for information potentially relevant to the suitability determination. We believe this requirement is burdensome, unworkable and unreasonable.

Again, we appreciate the opportunity to comment on this very important issue that stands before the industry. Please contact me should you have questions or require any additional information.

Sincerely,

PlanMember Securities Corp.

Daniel A. Murphy

Daniel A. Murphy, VP
Chief Compliance Officer

Thank you for the opportunity to comment on the proposed suitability and know your customer rule.

As a general comment, the proposal looks pretty good to me. However, I do want to comment on two aspects. First, the rule should cover only those recommendations concerning securities and investment strategies relating to securities. I believe that expansion of this rule beyond securities and investment strategies relating to securities is ill-advised; I very much prefer the rule to cover securities—not non-securities.

Second, this rule should be directly correlated with the requirements of NASD Rule 2310, in terms of the required information that must be obtained for a non-institutional customer. This will eliminate confusion when opening a new account and gathering information from a non-institutional customer. As a further note, it would be nice if NASD Rule 3110(C) could also be directly correlated to the terms of this rule and NASD Rule 2310—especially since Finra has recently designed and recommended a customer new account template, which seems to incorporate much of this required information.

Neal E. Nakagiri
President, CEO, CCO
NPB Financial Group, LLC
3500 W. Olive Avenue, Suite 300
Burbank, California 91505
Office phone: 818-827-7132
Office fax: 818-827-7133
Office e-mail: neal.nakagiri@npbfg.com

From: Mike Nakashima [mailto:mnakashima@tfamail.com]
Sent: Tuesday, June 23, 2009 1:12 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

Dear FINRA:

As a licensed insurance agent and a registred representative I am very concerned about you trying to broaden your base of regulation to include non-securities products. Non-Security products are regulated at the state level and if FINRA Regulatory notice 09-25 were put into effect you would be overstepping your authority.

While I agree that regulation of securities by FINRA is a good thing, please do not take measures which go beyond your jurisdiction. There is absolutely no reason that the states cannot regulate non-security products. Additionally, as an independent financial planner you are attempting to take more money out of my pocket and put into my broker dealer's which has a benefit for FINRA. This action is unnecessary, and it should not even be considered.

Sincerely,

Michael Nakashima

Innovate Financial, Inc.
6701 Penn Ave. Suite 200
Richfield, MN 55423
(612) 824-1107 - Office
(612) 720-0209 - Cell
(612) 861-5880 - Fax

www.innovatefinancial.com

From: Naylon, Maurice [Maurice.Naylon@lfg.com]
Sent: Monday, June 29, 2009 10:31 AM
To: Comments, Public
Subject: FINRA

FINRA should not stray outside of its normal purview, i.e., securities. The states do a fine job with the oversight of life insurance products.

Moe

Maurice L. Naylon III
Partner
The Financial Architects
6255 Sheridan Drive, Suite 300
Amherst, New York 14221-4825
Telephone: (716) 856-6200
Facsimile: (716) 626-9575
Toll Free: (888) 375-6200
Mobile: (716) 818-6200
E-mail: maurice.naylon@LFG.com
Website: www.financialarchitects-usa.com
Member: Sagemark Private Wealth Services

From: Negley, Michael [mnegley@finsvcs.com]
Sent: Tuesday, June 30, 2009 11:31 AM
To: Comments, Public
Subject: FINRA's proposal to regulate the life insurance industry

I deeply oppose FINRA's proposal to regulate the life insurance industry which is already regulated to death and in no way should be compared to securities. First of all, the securities regulation people have not learned how to properly regulate securities as is obvious in the Madoff scandal (and many others) even after it was called to their attention on three different occasions. In fact, some of them need to be where Bernie Madoff is now. I recognize that the AIG scandal comes under the heading of "insurance", but only in name because AIG is considered an insurance company. Credit default swaps were derivatives and should in no way apply to the life insurance companies which sell traditional insurance products backed by reserves and regulated by the states. The life insurance companies, some of which date back nearly 200 years, have a remarkable record of stewardship and during the Great Depression life insurance cash values were often the only assets of any value owned by thousands of citizens.

The fact is that life insurance companies are regulated by the states in which they do business. From a customer's standpoint, it is far easier to get help from a state insurance department than it is from any federal agency. There are some things the federal government does need to manage even if it doesn't do it well. But in the case of the life insurance companies, I want to see regulation kept at the state level where it is closer to the customer.

For many years I was a member of AALU and met with Congressmen on a regular basis to explain the impact of proposed federal legislation. The truth is that very few members of Congress had the slightest understanding of life insurance, yet they were proposing and passing legislation all the time which affected it. Most of them owned life insurance and still did not understand the impact of their legislation on their own insurance.

Life and disability insurance is a very important asset. It is unique in that it replaces the lost income when the insured is injured, sick or dies. Nothing else does this. Cash value life insurance also creates a reserve account available to the policyholder for retirement and unexpected cash needs. Life insurance is also one of the few methods of long term savings which has consistently worked for over 100 years under all kinds of economic conditions, wars and financial turmoil. Life insurance companies have also been a fundamental force in capital formation and the purchase of government debt. I see federal regulation as being nothing more than another layer of imposed requirements none of which will guaranteed any additional safety and render life insurance as a less valuable and more difficult to put into place.

Sincerely yours,

Michael E. Negley, CLU, ChFC, MSFS

138 Woodcreek Drive, E.

Safety Harbor, FL 34695

From: Dave Neuman [mailto:daveneuman@stoltlaw.com]
Sent: Wednesday, June 24, 2009 5:31 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Marcia E. Asquith
FINRA, Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506
pubcom@finra.org

RE: FINRA Proposed Changes to Suitability and Know Your Customer Rules
Regulatory Notice 09-25

Dear Ms. Asquith:

I appreciate the opportunity to comment on FINRA's proposed changes to the suitability and know your customer rules. I am attorney who concentrates his practice on representing investors in securities arbitration and litigation. I believe that there are some positive and negative aspects to the new rule, but I generally support the proposed rule change.

I believe the proposed Rules 2111 and 2090 will provide some benefits to investors. It clarifies what factors an associated person should consider when recommending an investment to a customer. I also support FINRA's decision to include both "transaction(s) or investment strateg(ies)" under proposed Rule 2111.

In addition, I support the language of the Supplementary Material for proposed Rule 2111. This material should be able to help brokers understand the different components of suitability obligations they have towards their customers.

I also support the addition of Rule 2090 and its supplementary materials. It seems obvious that broker's should have an obligation to know essential facts concerning their customers, especially in light of a broker's suitability obligations.

I think the proposed rule could be stronger and should be amended to provide better protection for investors. For one, the new rule does not discuss a broker's recommendations to hold onto a security. A recommendation to hold is almost just as important (and sometimes more important) to a customer than the decision to buy. Changes in the market conditions or the client's individual circumstances may prompt a decision to sell or hold a security. I hope FINRA will consider this issue and propose language to include suitability obligations for recommendations to hold as well (or at least make the language clearer to indicate that recommendations to hold are covered under proposed Rule 2111).

Also, I believe that the proposed rule should be broader to include suitability obligations for all transactions, not just broker recommendations. In the practical reality of today's securities brokerage industry, most brokers are more than just mere order-takers. Many brokers provide

advice to their customers about which securities to buy, sell, or hold, and many brokers hold themselves out as "financial planners."

A broker should have the same obligations to a customer who himself or herself recommends which security to buy, sell, or hold. Brokers are often in a better position to evaluate the risks and characteristics of a given investment product than the client is. Brokers have better access to research reports, prospectuses, marketing materials, brochures, etc., than their clients, and this should prompt brokers to consider and discuss with the client the suitability of such investment. Today's brokers should consider the suitability factors when discussing all transactions, including customer-initiated recommendations.

I do support the changes that have been made to the rules, but I think they can go further in protecting the general investing public. For these reasons, I support the adoption of these rules but ask that FINRA expand these rules. Again, I appreciate the opportunity to comment on these proposed rules.

Sincerely,

David Neuman
Stoltmann Law Offices, P.C.

-----Original Message-----
From: rana17@verizon.net [mailto:rana17@verizon.net]
Sent: Thursday, June 25, 2009 8:45 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Robert Newman Newman
1520 Richard Dr
West Chester, PA 19380-6333

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Robert Newman Newman
610-692-5027

From: Steven Nimmer [mailto:steve@wisconsincollegeplanning.com]
Sent: Tuesday, June 23, 2009 11:19 AM
To: Comments, Public
Subject: Regulatary Notice 09-25

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

First, FINRA currently does not regulate non-securities business and would only add unnecessary regulation to an area that is already heavily regulated. Additional regulation for securities is currently being reviewed for FINRA and the SEC and it would not be appropriate to consider or apply additional regulation to non-securities related business.

I do not want to be misread, I believe those who due abuse non-securities business/investments should be prosecuted and punished, however strict regulation currently exist and expanding these duties to FINRA and the SEC would not be appropriate or prudent.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for your time and considering my views on this issue.

Steve

Steve Nimmer, CCPS
Certified College Planning Specialist
President

Wisconsin College Planning, LLC
327 Main Avenue
De Pere, WI 54115
Phone: (920) 632-4397
Fax: (920) 632-7149
E-mail: steve@wisconsincollegeplanning.com

Professional: One who answers the question you didn't even think to ask.

From: Mike Nitchen [mailto:m.nitchen@cox.net]
Sent: Tuesday, June 23, 2009 6:06 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

As a Health and Life Insurance advisor and member of NAIFA, I strongly object to the recommendation of FINRA's suitability obligations to include non-security product.

I ask you to please reconsider your position on this matter.

Thank you,

Mike Nitchen, LUTCF, CLTC, FSS

From: OBrien, Marty [mailto:OBrien.Marty@principal.com]
Sent: Friday, June 26, 2009 2:52 PM
To: Comments, Public
Subject: Opposition to expanding Finra's suitability jurisdiction to non securities products

To Whom It May Concern:

I am writing this email to oppose expanding Finra's suitability enforcement responsibilities to include non securities products. Finra does not have the resources to oversee non securities products at this time. It would also add a burden to broker dealers which do not have the resources to maintain proper training in products that they do not now sell. It is not a good idea to make this expansion at a time when there is a debate going on to determine what Finra should be overseeing. Once that is resolved the expansion may be a moot point. Many non securities products are already regulated by the States.

I am a licensed Insurance professional and a registered securities representative.

Martin F. O'Brien
Managing Director
Princor Registered Representative
Principal Financial Group
711 Deerwood Avenue, Suite 100
Neenah, WI 54956
920-727-8860 ext. 128
FAX: 866-469-6290
email: obrien.marty@principal.com

From: joseph.oconnor@nmfn.com [mailto:joseph.oconnor@nmfn.com]
Sent: Wednesday, June 24, 2009 11:53 AM
To: Comments, Public
Subject: FINRA Reg Notice 09-25

Hello,

Why extend to non-securities transactions securities regulations? The operating presumption should be that government intervention should be limited rather than expansive, and the each intervention must have a clear and compelling cost benefit outcome. Please review the mission of your operations.

Sincerely,

Joseph F. O'Connor, CPA, CLU, ChFC

Financial Representative

One North Wacker Drive, Suite 4600

Chicago, Illinois 60606

Office (312) 641-8900

Direct dial (773) 238-4456

Fax (312) 641-6930

e-mail: joseph.oconnor@nmfn.com

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In the event that you cannot click on the above link, the Northwestern Mutual E-Mail Opt-out form can be found at the following URL: https://service.nmfn.com/cbpeopt/EmailOptOut.do.

Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Richard Orvis [mailto:Rich@richardorvis.com]
Sent: Tuesday, June 23, 2009 3:54 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

I am a licensed Registered Representative and insurance professional.

I would like to state my opposition to expanding FINRA's suitability requirements to include recommendations that do not include securities. Every licensed professional is subject to multiple regulatory agencies already. This will create unnecessary redundancy in our regulatory system. Not only will it unduly burden the Rep with serving multiple regulatory masters, but will distract FINRA's attention from it's primary duty of regulating securities practices.

I understand a regulator's enthusiasm to make certain that all Reps are practicing legally and ethically, but eventually, a Rep has to spend some time in his/her day actually serving clients rather than working on compliance activities. Even my job would be a lot easier if all Reps were ethical. If the Reps become so burden with redundant regulation, there will be even less time to serve clients. It will also stretch FINRA's limited resources.

In short, I believe this will not increase consumer protection. The only possible end result will be more redundant paperwork for FINRA, the broker dealers and the Reps. I don't believe this will help FINRA catch an more unethical Reps than would already be caught by the existing system.

Thank you for considering my thoughts on this issue.

Richard C. Orvis, CLU® ChFC® RHU
Financial Advisor
Princor Registered Representative
Telephone: (918)492-0077
Fax: (918)492-0303
Email: rich@richardorvis.com
Website: www.richardorvis.com
5555 E. 71st St., Ste. 6310
Tulsa, OK 74136

From: Douglas Osborne [mailto:dmosborne1@yahoo.com]
Sent: Tuesday, June 23, 2009 4:50 PM
To: Comments, Public
Subject: Fw: expansion of oversight

--- On **Tue, 6/23/09, Douglas Osborne <*dmosborne1@yahoo.com*>** wrote:

From: Douglas Osborne <dmosborne1@yahoo.com>
Subject: expansion of oversight
To: pubcom@finra.com
Date: Tuesday, June 23, 2009, 2:47 PM

I am oppossed to the idea of FINRA looking at suitability with regard to non securities. Many of my clients would be affected. They want privacy from government looking into their personal financial condition and the products and sevices they receive that are not securities related..
Douglas M. Osborne CPA... 406 252 4623

June 29, 2009

Sent via facsimile to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: *Comments on Regulatory Notice 09-25 seeking comment on FINRA proposal to consolidate the existing rules governing suitability and the know-your-customer obligations into a new FINRA Rule 2111 (Proposed Rule)*

Dear Ms. Asquith:

1st Global Capital Corp. ("1st Global") is a broker-dealer which conducts business in all domestic jurisdictions with over 1,150 registered representatives offering securities through nearly 625 branch locations.

As the Chief Compliance Officer of 1st Global, I appreciate the opportunity to submit comments on the issues raised in the above captioned new rule proposal by FINRA.

1st Global opposes the proposal to the extent that we feel it includes (1) an effort to expand suitability requirements to non-security investment products or services and (2) an effort to expand suitability criteria to include portfolio level concerns.

1st Global opposes FINRA's effort to expand suitability requirements to non-security investment products or services

1st Global vigorously opposes efforts to expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, we oppose FINRA's suggestion that it expand the 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.

A state system of regulation for the sale of insurance products as well as a dual state and federal system of regulation of investment advisory services already exists. FINRA needs to recognize this fact and continue to work with the regulators within those systems in order to ensure that they bring the level of regulatory scrutiny up to the level which exists within the securities industry. Indirect attempts to regulate segments of these industries via expansion of oversight of a limited number of individual participants within these segments who happen to be registered representatives will only result in ineffectual, disjointed consumer protection. At the same time, it will result in substantially increased supervisory costs for broker-dealers as well as continued attrition of registered representatives due to regulatory arbitrage (i.e., migration to segments of the industry which lack the regulatory commitment to devote substantial resources to frequent and routine proactive examination of participants).

As an aside, 1st Global fully supports the proposition that FINRA occupy a self regulatory organization role for the entire investment advisory industry. 1st Global believes that goal needs to be achieved via direct initiatives with the Securities and Exchange Commission and/or Congress not by FINRA rule modifications which are likely beyond its jurisdictional authority.

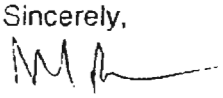
1st Global opposes the expansion of suitability criteria to include portfolio level concerns

A client's investment time horizon, liquidity needs, and risk tolerance are important considerations. However, 1st Global believes they are best judged at the portfolio level. The Proposed Rule would instead require each securities transaction to be suitable based upon these additional criteria. We believe this would have unfortunate unintended consequences for investors who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods.

In summary, 1st Global opposes the proposal because it inappropriately seeks to expand suitability requirements to non-security investment products or services as well as to expand suitability criteria to include portfolio level concerns.

Thank you again for the opportunity to provide commentary on this proposal.

Sincerely,



Michael A. Pagano
Chief Compliance Officer

From: Paul Parker [mailto:paul.parker.clg6@statefarm.com]
Sent: Tuesday, June 23, 2009 11:50 AM
To: Comments, Public
Subject: suitability

FINRA,

I am a licensed insurance agent and registered representative.

I oppose the additional suitability for other products.

In my opinion, the government should be requiring more suitability forms to be completed when people put money in a 401k or purchase a car. How many people put money into a 401k and do not have adequate cash on hand when needed. As you are aware, our government encourages people to make bad financial decisions.

Paul Parker, Agent

A State Farm Insurance Companies
Providing Insurance and Financial Services
1203 E. Main St
PO Box 814
Lincolnton, NC 28093-0814
704-735-7700 Office
704-735-7202 Fax
704-472-3047 Cell
www.paulparkeragency.com

From: denwoodparrish@yahoo.com [mailto:denwoodparrish@yahoo.com]
Sent: Tuesday, June 23, 2009 12:55 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Denwood Parrish
2054 Cherywood Dr
Melbourne, FL 32935-5517

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. More importantly, I am a taxpayer and voter. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

This issue is part of the current debate on regulatory changes to avoid future financial catastrophe and to give the public a fighting chance when working with financial professionals who may not have in mind their clients' best interests.

In addition, it appears that lawsuits and related expense to taxpayers may likely result from this proposed expansion of suitability rules.

Please weigh carefully the worth of these and countervailing views before deciding his matter.

Sincerely,

Denwood Parrish
3212423372

-----Original Message-----
From: Pasco Financial [mailto:pasco@pascofinancialgroup.com]
Sent: Friday, June 26, 2009 4:25 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am a licensed insurance professional and registered representative. I do not support the expansion of FINRA's suitability obligations to recommendations that do not involve securities. Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators.

I would add a possible exception would be those products that reflect values directly from the market or indices of the market, i.e., indexed annuities and life insurance.

Barton C. Pasco, CLU, ChFC
President
Pasco Financial Group, LLC
1770 N. Parham Road, Suite 100
Richmond, VA 23229
PH 804-355-0899
FAX 804-355-0399
pasco@pascofinancialgroup.com

From: Bill Peckinpaugh [bill@peckinpaughfinancial.com]
Sent: Tuesday, June 23, 2009 11:30 AM
To: Comments, Public

: Bill Peckinpaugh [mailto:bill@peckinpaughfinancial.com]
Sent: Tuesday, June 23, 2009 9:39 AM
To: 'pubcom@finra.org'
Subject:

I am an insurance professional and a registered representative. I am strongly against FINRA regulating products which are not securities. State insurance departments already vigorously regulate insurance products and there is no need for duplication.

Bill Peckinpaugh

Peckinpaugh Financial Group

(765) 288-1967

From: Edward Penfield [mailto:Edward.Penfield@tn.gov]
Sent: Friday, June 26, 2009 9:30 AM
To: Comments, Public
Cc: naifanashville@charter.net
Subject: finra regulatory notice 09-25

i am a licensed insurance professional. in the mid '80's and early '90's, i was also licensed to sell securities too.

several years ago i chose to not renew my security license because of the lack of safety of securities. therefore, i cannot understand your rational to include regulation of insurance products, i.e., fixed and fixed indexed annuities, in with securities. you above anyone else should understand the difference between the two.

please reconsider you efforts to include the regulation of an insurance product in with the regulation of less secure and safe variable annuities, which are a security.

sincerely,
e. lewis penfield, jr.
351 white dr.
lewisburg, tn 37091
931.637.0872
licensed insurance professional since 1985

From: George Peralta [mailto:george.peralta@cbsfinancial.com]
Sent: Tuesday, June 23, 2009 7:51 PM
To: Comments, Public
Subject: Finra's oversight of non-securities products

I have been in the life ins. business since 1971, and have been a series 7 rep since 1974. I am a CLU & a ChFC, also.

I am writing you to ask you to NOT extend FINRA"S suitability obligations to include NON-SECURITY products.

Broker dealers do not have the back ground or facilities to over see non-security products, FINRA does not have the jurisdiction to over see these non-security products, also.

I certainly agree that people that promote unsuitable sales practices and products should be sanctioned, but the non-security products need to be regulated by insurance organizations.

In addition to these reasons, FINRA would be destroying the relationship that many traditional life insurance agents have with their primary life compnaies that do not offer security products. Such agents, would all of a sudden have to leave those companies and begin to market those companies that thier broker-dealers use! In most cases, the clients would suffer, as not many broker dealers offer sufficient life companies. That is because they are in the "securities industry" not the life insurance industry!

I urge you to not extend FINRA"S suitability obligations over to non-security products!!

George E. Peralta, CLU, ChFC

Securities offered through Cullum & Burks Securities, Inc. Member FINRA/SIPC

From: brianp@pharesfinancial.com
Sent: Monday, June 29, 2009 3:11 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Brian Phares
PO Box 986
North Platte, NE 69103-0986

June 29, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

Good day:

I am writing today to respond to Regulatory Notice 09-25 and the comment on FINRA expanding the suitability rules they currently use to include products that are not securities. I strongly object to this as those products are already regulated by the states and we do not need multiple parties doing the same work.

From a consumer standpoint it also makes it confusing to know whom to follow up with if they do have any issues, to find information, etc.

I understand the need to regulate the various products, and agree that violations of sales practices, fraud, etc. need to be prosecuted with sentences that act as a deterrent, however when one governmental entity already handles it, with good results, then any additional is adding and unecessary burden to the companies, agents, representatives, and consumers.

I strongly urge you , therefore, to not expand FINRA's suitability items to include non-security products. I appreciate the opportunity to express my opiniion and thank you in advance for heeding it.

Sincerely,

Brian R. Phares
308-532-3180
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Patricia Miller Picardi [patriciapicardi@comcast net]
Sent: Tuesday, June 30, 2009 2.49 PM
To: Comments, Public
Subject: FINRA Legislation

To Whom it May Concern at FINRA-

As a financial advisor who is an active member of NAIFA which puts integrity above all else in practice, I want to voice my opposition to adding even one more suitability requirement to independent advisors struggling to survive in this new over-regulated environment. I personally have no idea how people like Bernie Madoff got away with his scheme. I cannot even leave an i un-dotted nor a t un-crossed without running into a compliance issue. Even though securities generate only 40% of my income, processing and compliance of securities business takes up 85% of my time.

Shame on the regulatory bodies for focusing so much energy and time on small infractions and not paying attention to gigantic schemes and scandals going on right under their noses.

Work on better and more efficient compliance and compliance oversight systems, not just laying yet one more suitability layer to our already struggling practices. Between people like Madoff and the regulatory agencies, you are going to drive many small business owners out of work.

Sincerely,

Patricia Miller Picardi, CLU, ChFC

Independence Planning Group

Providing objective analysis & strategies for financial balance, independence and well being to small businesses and families

758 East High Street, 1st Floor

Pottstown, PA 19464

610-970-8555

610-970-8558 (fax)

From: ScPick@aol.com [mailto:ScPick@aol.com]
Sent: Tuesday, June 23, 2009 12:04 PM
To: Comments, Public
Subject: Suitability Obligations

Dear Madam/Sir,
I am a licensed insurance professional and registered representative, and have been for over twenty three years. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. The amount of regulation by the state and federal governments has grown and grown over the years to the point that it is ridiculous. I know there are bad people in this business, and they should be locked up for their crimes, but to put us all in the same category through added paperwork and regulations is not fair to those of us who have spent so much time serving our clients in an honest and straightforward manner.
I work for MassMutual, and they are wonderful stewards to their policyholders. They watch us for unethical practices, the state watches us, the SEC and FINRA watches us. Isn't that enough? Meanwhile, Bernie Madoff and people like him run rampant without too much interference from regulators. It is getting to be a paperwork nightmare to do business.
Please do not get involved with areas of business that are already highly regulated.

Thank you,

F. Joseph Pickett, CLU, ChFC
11021 Winners Circle, #105
Los Alamitos, Ca 90720
562 431-3854, ext. 102 (Office)
562 431-1365 (fax)

From: George Pickett [mailto:gpickett@pba-centerpoint.com]
Sent: Thursday, June 25, 2009 7:42 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am writing in opposition to the idea of expanding FINRA suitability oversight to matters which are not related to securities. I have been licensed as a securities representative for over 35 years. I have also been licensed as a life and health insurance agent for over 35 years. In addition to my undergraduate degree, I earned the Chartered Life Underwriter designation which is made up of curriculum requirements approximating 30 hours of college classroom credit. I also earned the Juris Doctorate degree. I am active in professional organizations whose purposes are to raise standards of service, knowledge, ethics and productivity among practitioners in the financial services field. I am also involved as a volunteer capacity in governmental affairs.

I feel that persons who engage in unsuitable sales and misleading sales practices should be subjected to rigorous enforcement practices by appropriate authorities. In the field of insurance, I feel those are already in place and being applied in the vast majority of instances with appropriate expertise. Exceptions can be found in every field including insurance, practices of registered reps, broker dealers and even RIA's such as Mr. Madoff and Mr. Stanford. No regulatory process is perfect, and FINRA takes policing actions routinely in order to redress inappropriate behavior which continues to occur despite your best efforts to set and enforce suitability standards. Your success rate isn't 100%. Neither are other regulators' but that doesn't mean FINRA would be better than those others.

Rather than expand the scope of FINRA regulatory purview to including areas where others possess far greater expertise, I would hope that FINRA would focus its attention more sharply on the existing shortcomings which are already sanctioned by your rules but which continue to occur frequently. One very common problem I see is that registered reps and their broker dealers have executed multiple small mutual fund transactions with different fund families, rather than focusing customers in a single family in order to maximize breakpoint benefits for the investor. The rep initiates the purchase. The broker dealer has no system in place to prevent it. Apparently FINRA has no effective means to interrupt this kind of misbehavior which I have observed throughout my career.

In the bigger picture, there are major discussions taking place around the country as to the appropriate regulatory framework that should be implemented for sale of securities, provision of investment advice, mortgage lending, credit card lending practices, banking services and fees and delivery of other financial products and services. These discussions involve multiple organizations such as FINRA and also governmental entities like both houses of Congress, OCC, the Federal Reserve, the SEC and others. They also involve thousands who are employed in distribution and servicing of the entire array of financial services.

In view of the scope of these present discussions, it would be unwise and unconstructive for FINRA to attempt to preempt thoughtful dialogue among all of these parties. It would appear to be a power grab. The results would be predictably chaotic. They would not serve the long term best interests of the American people, our economy and our financial system.

I hope and pray that FINRA will continue to focus on the areas in which its efforts have historically been channeled and continue to be involved in the ongoing discussions with other interested and affected entities on the appropriate means of effectively and suitably serving the public going forward.

Sincerely,

George B. Pickett, J.D., CLU, AEP
Principal - Pickett, Bradford & Associates, P.A.

P. O. Box 137, Jackson, MS 39205
414 E. Capitol St., Jackson, MS 39201
601-969-3456 / Fax 601-969-3517 / Cell 601-209-5897

From: Robert Port [rport@cgpglaw.com]
Sent: Monday, June 29, 2009 6:23 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Asquith,

Please accept this comment on the referenced proposed changes to the Suitability Rule and the Know Your Customer Rule, FINRA Rules 2111 and 2090.

I am an attorney in Atlanta, Georgia, and my practice areas include the representation of public customers in securities arbitrations.

I adopt the arguments and reasoning stated in the comment letter filed on June 26, 2009 by the Public Investors Arbitration Bar Association (PIABA).

The federal securities laws reject the concept of "caveat emptor." In the words of the United State Supreme Court, the "fundamental purpose [of the securities laws is] . . . to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry." SEC v. Capital Gains Research Bureau, 375 U.S. 180, 186 (1963). The changes proposed would, in large measure, generally enhance the protections that are to be afforded to public investors, and I urge FINRA to file these proposals with the SEC, after adopting the recommendations set forth in the PIABA submission.

Robert C. Port, Esq.
Business and Securities Litigation

Cohen Goldstein Port & Gottlieb, LLP
990 Hammond Drive
Suite 990
Atlanta, Georgia 30328
(678) 775-3550 (Direct Dial)
(770) 901-9417 (Fax)
email: rport@cgpglaw.com
www.cgpglaw.com

From: Rick Powell [rick powell@primoris-financial.com]
Sent: Saturday, June 27, 2009 1:35 PM
To: Comments, Public
Subject: Comment on FINRA Notice 09-25 published in May 2009 and proposed FINRA Rule 2111

Sincerely,

Rick Powell, ChFC

****

Rick Powell is the President of Primoris Financial Solutions Co. He is a Registered Principal with LPL Financial, and a Chartered Financial Consultant (ChFC).
Whenever Rick helps a client with financial planning services, these services are provided through LPL Financial, a Registered Investment Advisor (RIA). Financial planning services include Retirement Planning, Estate Planning, Business Succession Planning, and other specific planning engagements.
Whenever Rick helps a client purchase a securities product, those products are provided through LPL Financial, a Registered Broker/Dealer Firm. Securities products include Stocks, Mutual Funds, Variable Annuities, Variable Life Insurance, Bonds, and several other financial products.

Securities and Advisory Services offered through LPL Financial

Member FINRA/SIPC
For more information, call Rick Powell at:
602-273-0440 or toll free: **877-273-0440**
Or visit:
www.primoris-financial.com or **www.lpl.com/rick.powell**
Rick Powell's e-mail address is:
rick.powell@primoris-financial.com
Rick Powell's tax number is: **480-907-1338**
Rick is a Chartered Financial Consultant (ChFC) and a member of the Society of FSP.

Society of
FSP
Financial Service
Professionals
MEMBER

****

From: mayo anderson [mailto:mayo@gtpowersandassociates.com]
Sent: Wednesday, June 24, 2009 10:36 AM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

As a licensed insurance professional and registered representative, I strongly oppose expanding FINRA's suitability obligations to recommendations that do not involve securities.

I believe that people who promote unsuitable sales and engage in misleading sales practices should be prosecuted and subject to sanctions. FINRA does not have jurisdiction over products and services which are not securities, and I do not believe that FINRA has the expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities

Thank you.

G. T. Powers, Jr.

G. T. Powers, Jr. & Associates
1735 St, Julian Place, Suite 301
Columbia, SC 29204
Voice: (803) 799-5082 Fax: (803) 254-3281
mayo@gtpowersandassociates.com

From: Richard Paul Probst, CFP [rich@fountainheadfinancial.com]
Sent: Monday, June 29, 2009 4:51 PM
To: Comments, Public
Subject: Rule 2111 Comment

I have several concerns about the proposed changes and

firmly oppose any expansion of Rule 2111 to include "non-securities, services and

strategies". I already firmly support all suitability requirements for the products I offer

and then some. Creating overlaps in jurisdiction and added burdens on the brokerage

industry could be extremely harmful to my business and to consumers.

Additional burdens on smaller independent advisors will be harmful and more costly for the public, leading them only to deal with the largest firms which have been the biggest contributors to our current financial problems.

Richard Paul Probst, CFP®
LPL Investment Advisor Representative
Certified Financial Planner™

Fountainhead Financial Management, Inc.
A Registered Investment Advisor
301 N. Center St. Northville, MI 48167

Ph. 248.347.7424
Fax 248.692.0005

www.FountainneadFinancial.com

rich@FountainheadFinancial.com

Securities Offered Through LPL Financial
Member FINRA/SIPC

From: mark.prudhomme@nmfn.com [mailto:mark.prudhomme@nmfn.com]
Sent: Thursday, June 25, 2009 3:44 PM
To: Comments, Public
Subject: proposed new finra rules regarding suitability

Having been an insurance professional and registered rep for over 30 yrs it would seem counterproductive for finra's regulatory reach to be beyond securities. Insurance and non security products already carry heavy and strict state regulation. Finra does not have the skill set to expand its reach to insurance and non security products. It is another layer of cost that is redundant and to which I object strongly.

Mark Prudhomme Clu ChFc

Memphis, Tn.

From: Ray Quint [mailto:rquint@fdg.net]
Sent: Thursday, June 25, 2009 10:47 AM
To: Comments, Public
Subject: FINRA's Regulatory notice 09-25

I am a licensed insurance professional and registered representative writing you as I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Insurance and non-securities products are already regulated at a state level through the state insurance department and other state regulators. I firmly believe that people promoting unsuitable sales and those engaged in misleading sales practices should be prosecuted and sanctioned, but allow the state insurance department handle the non-securities products as they have a better understanding of the rqmts. for their individual state as they are not all the same.

FINRA nor the broker/dealer have the resources or product specific expertise necessary to oversee non-security transactions and FINRA should not be expanded to include non-security products and services.

If application of FINRA is applied to these products it could result in conflicting regulatory requirements. Let the state insurance department do their job and require agents to belong to professional associations and maintain professional designations such as LUTCF, CLU, CHFC and there would not be a need for further regulations.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Ray Quint
Financial Decisions Group
1660 Embassy West Drive
Suite 175
Dubuque, IA 52002
Phone: 563.556.2832
Fax: 563.556.2836

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From: Radabaugh, Diana K [DRADABAU@amfam.com]

Sent: Tuesday, June 23, 2009 10:54 AM

To: Comments, Public

Subject: Opposing Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities.

I do oppose the expansion of suitability obligations to recommendations that do not involve securities. Insurance companies are already under
are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements.

Sincerely,

Diana Radabaugh, DM 171
1402 N Rutherford
Macon MO 63552
660-385-7771

From: SBRSAFEPLANNING@aol.com [mailto:SBRSAFEPLANNING@aol.com]
Sent: Friday, June 26, 2009 12:57 PM
To: Comments, Public
Cc: steve@safeplanning.net; corbett.sutton@irwinfinancialgroup.com; stephen.way@irwinfinancialgroup.com; becky@irwinfinancialgroup.com; ric.cochran@gmail.com; ken@kenfletcher.net; edpennington@comcast.net; mcoley@austin.rr.com; krista.brock@sbcglobal.net
Subject: Proposed Regulation

For those of you who receive a copy of this. It is my short opposition to Finra's proposed rule 09-25.

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

I would like to take the opportunity to encourage those in control to stop and take a deep breath and realize the insanity of what is being proposed. As I read it Finra wants to run any type of monetary product through their channels. We can see the obvious power/control reasons here but I also understand that there are some true issues in the marketplace with suitability. The proposal also wants to oversee service and strategies. This is one area where I'm deeply concerned about who is going to be reviewing all of the areas of service and strategy that may come from recommendations a person may make to a client regarding simple investments, estate planning, tax planning, medicaid planning, Veteran's Benefits planning and the list could go on...

I work heavily in the area of Medicaid Planning. This is a complicated area of planning that very few know anything about. I would be amazed if you could find more than a handful of people in the Broker Dealer world that could have an intelligent conversation about Medicaid rules and regulations and the strategies that can be used in that type of planning. In every case that involves this area of planning, recommendations have to be made regarding the clients existing financial and estate picture. It may be as simple as removing an applicant's name from their spouses bank account or that they need to pre-pay for their burial. It can get increasingly more complicated when we have to address how the state will regard their IRA's, annuities, etc. There are many ways to protect these people and get them approved for benefits but it is only because we develop strategies and make recommendations regarding all areas of their estate, including their financial picture. To further cloud the situation. Medicaid is a federal program but administered on the state level. So what might be a suitable suggestion in Florida would absolutely be bad advice in Louisiana. Are you prepared to have the experience and knowledge in all these possible areas of investments, health policies, life policies, long term care policies, medicaid planning, tax planning, estate planning, etc so as to determine whether or not what an advisor is advising is correct information and suitable?

I could write on for days pointing out the pitfalls in what is being proposed but I think my point and my opinion has already been given in this brief passage. I encourage you to think about what your proposing before you create a much larger mess than that you claim to be wanting to clean up.

Thank you for your consideration in this matter.

Steven Blake Rainey
President
Safe Planning, Inc.
920 Pierremont Rd. Ste. 105
Shreveport, LA 71106
Phone (318) 869-3133
Fax (318) 869-3134
Toll Free 1-888-836-2738

Visit our " NEW " website. www.safeplanning.net

From: Larry B. Rash, CLU [mailto:lrash@ft.newyorklife.com]
Sent: Tuesday, June 23, 2009 9:58 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

It's preposterous for FINRA to be considering overstepping it's authority by expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have authority or jurisdiction over these products and services because they are not securities. To expand your authority to products and services that are outside of your oversight authority would not only be unprecedented, it is unwarranted.

Think Green! Please consider our environment before printing this e-mail.

Larry B. Rash, CLU
Agent, New York Life Insurance Company, Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC).
899 Outer Road, Suite A
Orlando, FL 32814
Phone: 407-228-8445
Cell: 407-353-7610
Fax: 407-228-8446
lrash@ft.newyorklife.com

From: Ronald Reimert [rreimertjr@verizon.net]
Sent: Tuesday, June 23, 2009 3:49 PM
To: Comments, Public
Subject: oppose expansion

To whom this may concern,

On behalf of NAIFA-WV, I oppose expansion of suitability obligations to recommendations that don't invovle securities. Thank you.

Ronald L. Reimert,Jr. LUTCF
NAIFA-WV

From: Marv Reynolds [Marv.Reynolds@benfinancial.com]
Sent: Monday, June 29, 2009 6:50 PM
To: Comments, Public
Subject: Suitability

Dear Finra, I am writing to express my feelings about your proposal to expand suitability requirements to include all financial service recommendations. I think it is over kill. Please do not proceed with this effort. Not everyone needs to be regulated by the securities industry. Please keep your focus on the investment and risk taking business. It seems that there is plenty of room for improvement their before taking on even more regulatory responsibility. Let's clean up our own house before we try to clean up someone elses. Thanks for considering this message. Marv Reynolds.

Marvin r reynolds

Oxford FinANCIAL GROUP

455 E 500 S # 305

SALT LAKE CITY, UT 84111

801-595-1730 TOLL FREE 800-765-6383

FAX 801-595-1759

marv.reynolds@benfinancial.com

From: Riekse Jr., Tom [mailto:Tom.RiekseJr@LTCIPartners.com]
Sent: Wednesday, June 24, 2009 10:27 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

Hello, I am a principal at an organization that provides support for national and regional B/D's and registered reps. I'm concerned about expanding FINRA's suitability obligations to recommendations that **don't** involve securities.

Specifically, our firm provides a service to insurance licensed and credentialed registered reps when they are working on long-term care planning for their clients. Our firm works with several long-term care insurance carriers, and we work with reps in finding the best fit for a consumers long-term care needs by looking at the health history, the cost of care in an area, and the financial characteristics of the client.

Our careful vetting process means that we are recommending reps use products that are in the client's best interest, based on premium and underwriting consideration. In most states long-term care insurance licensed producers are subject to specialized CE training that discusses suitability and other issues – often in an 8 hour classroom setting.

Our country is facing an historic health care and fiscal crisis. My fear is that consumers who want to purchase long-term care insurance to help pay for the cost of care from conditions such as Alzheimer's and relieve the strain on our public health care system (not to mention depleting their retirement savings) will not be able to get advice from a trusted registered rep because of the additional compliance burdens.

Please don't expand FINRA's suitably obligations to include recommendations that don't involve securities. Thank you.

Tom Riekse, Jr.
LTCI Partners, LLC
100 Field Drive, Suite 140
Lake Forest, IL 60045
877.949.4582, extension 111

From: Jane Riley [mailto:jane@leadersgroup.net]
Sent: Thursday, June 25, 2009 2:52 PM
To: Comments, Public
Subject: Comment on FINRA proposed rule 2111

To Whom It May Concern:

I would like to express my opinion that proposed rule 2111 needs more consideration before being sent to the SEC for approval.

In particular, I oppose FINRA's effort to expand suitability requirements to non-security investment products, services or strategies. Without a precise definition, this opens unlimited liability for independent broker dealers, and expands FINRA's reach in to matters it does not have jurisdiction over, particularly insurance products which are regulated at the state level, and investment advisory services which are regulated by the states and SEC.

I also oppose expansion of the suitability criteria on each transaction. While these criteria are important considerations of suitability, they are best judged as they are met by a total portfolio, not a single transaction or portion of the portfolio.

The expansion of the suitability review to include information known by the broker-dealer would need further clarification and definition to be useful. What would be considered applicable information?

Most importantly, this rule seems to be a moot point as regulatory reform is looking at a fiduciary standard rather than a suitability standard for registered representatives.

Please withdraw this proposal and re-write it to better meet today's regulatory needs.

Sincerely,

Z. Jane Riley
Certified Securities Compliance Professional® (CSCP™)
Chief Compliance Officer
The Leaders Group, Inc./TLG Advisors, Inc.
Member FINRA/SIPC
26 West Dry Creek Circle, Suite 575
Littleton, CO 80120
(303) 797-9080
(303) 797-7297 Fax

From: William Roberts [mailto:Bill.Roberts@fbfs.com]
Sent: Friday, June 26, 2009 10:22 AM
To: Comments, Public
Subject: Securities issue

Please not my opposition to expanding suitability requirements for non-securities issues. This is not appropriate and I strongly oppose this potential action.

Bill Roberts
Associate Manager
Farm Bureau Financial Services

Two Office locations for your convenience.

154 S. 7th St. 3 W. Walnut
Salina, KS 67401 Herington, KS 67449
(785) 404-1900 office OR (785) 258-3098 office
(785) 823-7744 fax (785) 258-2385 fax
(785) 577-5051 cell (866) 544-2691 toll free

Registered Representative/Securities and Services offered through
EquiTrust Marketing Services, LLC*
5400 University Ave.
West Des Moines, IA 50266
877-860-2904, Member SIPC

*Company of Farm Bureau Financial Services

Allen, Donna

From: judith.romaine@ubs.com
Sent: Wednesday, July 01, 2009 5:16 PM
To: Comments, Public
Subject: FINRA Notice 09-25

Attachments: DOC001.PDF; Legal Disclaimer


DOC001.PDF (76 KB)


disclaim.txt (1 KB)

On behalf of UBS Securities. Thank you for your attention.

Regards,

Judy Romaine

UBS Investment Bank

UBS Securities LLC
One Stamford Forum, 201 Tresser Boulevard
Stamford, CT 06901

www.ubs.com

CONFIDENTIAL TREATMENT REQUESTED

VIA E-MAIL

July 1, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 09-25 –Proposed Amendments to the Suitability and Know Your Customer Rules

Dear Ms. Asquith:

UBS Securities LLC ("UBS-S") appreciates the opportunity to comment on FINRA Regulatory Notice 09-25, regarding Proposed Amendments to the Suitability and Know Your Customer Rules. We understand that combining NASD Rule 2310, addressing suitability obligations, and NYSE Rule 405, addressing know-your-customer obligations, would streamline the SRO rules governing suitability and is a worthy undertaking that would ultimately promote more consistency and effective oversight. For the reasons discussed below, however, an important aspect of the current proposal would result in an undue burden on member firms with regard to information gathering.

COMMENTS

Proposed Rule 2090 and Suitability Rule

Proposed Rule 2090 would require firms to obtain essential facts about all customers upon account opening, including information relating to the customer's financial profile and investment objectives and policy. While FINRA does not define financial profile, it does define customer profile to include information concerning the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information that the member or associated person considers to be reasonable in making recommendations.

It is unclear whether broker-dealers must obtain all the information described as customer profile information at the inception of the relationship in addition to financial profile information or whether only what firms deem as essential facts about their customers must be obtained. The Rule proposal is also unclear because it does not distinguish between natural persons and institutional accounts.

We would note that it has long been recognized that suitability principles only apply when recommending an investment to a client. UBS's accounts are almost entirely institutional and the Firm does not recommend investments to these clients. Accordingly, there is simply no need to obtain detailed customer profile information from institutional clients that is really geared more to

retail client relationships . In addition, institutional customers are often reluctant to provide financial information to the broker-dealers with whom they trade beyond required AML-related information absent a clear regulatory requirement mandating that specific information be provided by all institutional customers. Therefore, from our experience, we believe that attempting to impose such a requirement upon broker-dealers to obtain such information from their institutional customers will prove to be futile.

In light of the foregoing, we recommend that FINRA permit each firm to obtain the essential facts for their customers without having to rigidly apply FINRA's customer profile definition.

We thank you for the opportunity to comment on FINRA's proposal regarding Rule 2090. If you have any questions or require further detail, please contact the undersigned at (203) 719-6976.

Sincerely,

Judith Romaine
UBS Securities LLC

UBS Investment Bank

UBS Securities LLC
One Stamford Forum, 201 Tresser Boulevard
Stamford, CT 06901

www.ubs.com

CONFIDENTIAL TREATMENT REQUESTED

VIA E-MAIL

July 1, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 09-25 –Proposed Amendments to the Suitability and Know Your Customer Rules

Dear Ms. Asquith:

UBS Securities LLC ("UBS-S") appreciates the opportunity to comment on FINRA Regulatory Notice 09-25, regarding Proposed Amendments to the Suitability and Know Your Customer Rules. We understand that combining NASD Rule 2310, addressing suitability obligations, and NYSE Rule 405, addressing know-your-customer obligations, would streamline the SRO rules governing suitability and is a worthy undertaking that would ultimately promote more consistency and effective oversight. For the reasons discussed below, however, an important aspect of the current proposal would result in an undue burden on member firms with regard to information gathering.

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In light of the foregoing, we recommend that FINRA permit each firm to obtain the essential facts for their customers without having to rigidly apply FINRA's customer profile definition.

We thank you for the opportunity to comment on FINRA's proposal regarding Rule 2090. If you have any questions or require further detail, please contact the undersigned at (203) 719-6976.

Sincerely,

Judith Romaine
UBS Securities LLC

TAURUS

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

In re: ***Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations – Regulatory Notice 09-25***

Dear Ms. Asquith:

Taurus Compliance Consulting, LLC appreciates the opportunity to comment on the Consolidation of the FINRA Rule Governing Suitability and NYSE Know-Your-Customer (KYC) Obligations pursuant to Regulatory Notice 09-25.

Taurus Compliance Consulting, LLC, hereby known as "Taurus", generally encourages all proposals which create or consolidate sensible obligations and rules for a member firm in accordance with the development of the FINRA Consolidated Rulebook. Taurus strongly believes that streamlining and consolidation is beneficial in providing clarity to the industry and will assist our clients in the development and implementation of more uniform policies, procedures and compliance controls.

Proposed FINRA Rules 2111and 2090 consolidate and clarify NASD Rule 2310 and NYSE 405 as well as codify the long standing SEC and FINRA interpretations in NASD IM 2310-3. The proposed rule addresses customer suitability obligations and the know-your-customer obligations while eliminating duplicative provisions of each.

1. The Proposed Rules

Taurus supports the proposal to apply suitability obligations to both recommended transactions and investment strategies involving a security or securities. While there may be occasions when a clear distinction between the two can be made, that is not the norm and such a distinction is usually not apparent. Furthermore, a particular transaction is often times the result of an investment strategy. The codification of 1. Reasonable Basis Suitability; 2. Customer Specific Suitability; and, 3. Quantitative Suitability would add a degree a clarity that exceeds an Interpretive Memo and consequently is an action that Taurus encourages.

Taurus would also like to encourage 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. Such obligations need to be consistent with a particular firm's outside business activities policy and selling-away prohibitions. While Taurus would like to caution against any regulation that is over-reaching, it would not seem reasonable to make an "approved" non-securities recommendation that is inconsistent with a customer's overall suitability profile.

A firm should not be held accountable for every piece of information about a customer that might be available as the customer needs to play the primary role in providing the relevant information. However, reasonable efforts to obtain information and to consider information already known to the firm should be part of the suitability process. Member firms should consider a suitability profile form that specifically asks the customer to provide any other information that would help the member firm to determine suitability.

2. Institutional Customer Exemptions

Taurus believes that the exemptions detailed in NASD IM-2310-3 should remain as part of the new consolidated rule book but cautions against allowing an institution "[t]o forego the protection of the customer-specific obligation of the suitability rule". Such a waiver seems to be an invitation for suitability disputes, confusion and a step backwards.

Taurus Compliance Consulting, LLC exists to provide our clients with the knowledge and expertise necessary to have the most robust and practical compliance structure. We constantly strive to strike a balance between customer protection and market efficiency. As stated earlier, Taurus is a proponent of rule proposals that streamline, simplify, and clarify the compliance obligations of a member firm.

Please feel free to contact me at 1.800.388.8822 (Ext. 125) or drome@tauruscompliance.com if you have any questions or would like to further discuss this proposed rule change. Thank you again for the opportunity to comment.

Sincerely,

Daniel C. Rome
General Counsel

From: Alin Rosca [arosca@jscltd.com]
Sent: Monday, June 29, 2009 3:47 PM
To: Comments, Public
Cc: 'John Chapman'
Subject: Comments Regarding Proposed FINRA Rule 2111

Dear Sirs:

I am writing to comment on FINRA's proposed Rule 2111, governing suitability and the broker-dealers' duty to know their customers.

Firstly, one of the issues on which FINRA is seeking comment is whether the suitability obligations should be expanded to "all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether recommendations involve securities." The suitability obligations should be expanded to cover such recommendations.

The financial industry's long-term trend has been to expand the range of services offered to customers. Many broker-dealers have moved on from the more traditional function of merely supplying stock recommendations to customers. They have adopted a more comprehensive business model that focuses on providing "financial planning" services. Such services address a wide variety of investment-related needs a customer may have.

The regulatory framework should keep up the pace with such industry developments. Industry regulators should ensure that broker-dealers follow the fair dealing rules with regard to all investment-related services they offer to customers. Retaining a narrow regulatory framework, which covers a decreasing part of broker-dealers' business, may gradually make such regulatory framework irrelevant and easy to avoid.

Secondly, a certain part of proposed Rule 2111(a) appears to be somewhat ambiguous and could result in an exceedingly narrow interpretation of a broker-dealer's "suitability" duties. The proposed rule states that

[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, *based on the facts disclosed by the customer in response to the member's or associated person's reasonable efforts to obtain information* concerning the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information ....

Proposed Rule 2111(a), Notice to Members 09-25 (May, 2009) (*emphasis supplied*).

Under a narrow reading, the member's "reasonable efforts" seem to be limited to merely asking the customer to respond to the member's request for certain information. Such efforts would be far from sufficient in the case of investors with reduced physical or mental capacity, such as many elderly investors.

Elderly investors often deal with broker-dealers through intermediaries such as relatives, friends, other professionals including accountants, investment advisers, or attorneys. The reasons for such arrangements often include the elderly customer's diminished (or absent) physical or mental capacity, long stays in nursing or medical care facilities, and so on. In such cases, merely asking the elderly customer to supply information deemed relevant is far from adequate.

Reasonable efforts should include obtaining relevant information from third-party professionals who are involved in assisting or managing the elderly customer's financial affairs. The text of Rule 2111(a) should eliminate the suggestion that a member's "suitability" duties are circumscribed to merely communicating with the customer to obtain relevant information.

Thank you for allowing our law firm to submit comments to this proposed rule.

Yours truly,

Alin L. Rosca

Attorney at law

John S. Chapman & Associates, LLC

700 West St. Clair Ave. Ste. 300

Cleveland, OH 44113

T 216-241-8172

F 216-241-8175

arosca@jscltd.com

www.johnschapman.com

NAIBD

June 29, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re:Regulatory Notice 09-25
Proposed Amendments to the Suitability and Know Your Customer Rule

Dear Ms. Asquith:

The National Association of Independent Brokers-Dealers, Inc. (NAIBD or the association) was formed in 1979 to positively impact rules, regulations, and legislation by facilitating a consistent, productive relationship between industry professionals and regulatory organizations. The association is national in scope with 350+ Broker-Dealer and Industry Associate Members.

NAIBD appreciates the opportunity to comment on the proposed rule noted above. We hope that our expressed views will have constructive value in presenting alternatives, issues and concerns regarding the new rule proposal, and that our responses to specific questions posed in the Regulatory Notice are informative.

NAIBD recognizes and appreciates the extent to which consolidation of the NYSE and NASD rules presents opportunities to streamline and modernize existing rules. This opportunity is especially compelling when applied to rules with such fundamental importance as suitability rules addressed in Notice 09-25.

Respectfully, NAIBD asks that FINRA consider the following comments and/or alternatives in respect to the proposed suitability regulation:

NAIBD members are concerned that extending the suitability rule to non-securities, as FINRA proposes, presents broad and complex challenges to firms that may be at minimum redundant at worst insurmountable where overlapping and/or redundant regulations cannot be practically reconciled. We strongly urge FINRA to reconsider any reference to non-securities in its proposed rule.

While NAIBD supports a "know your customer" principle, and does not object to minor changes to required information at the time of account opening, we believe that, as proposed, the expanded requirements for "essential information" create unnecessary confusion regarding specific suitability requirements versus what may otherwise require subjective or supervisory intervention or analysis. We believe Rule 2010 (formerly 2110) to be adequate in regard to the

"know your customer' standard and/or that additional regulatory guidance related to Know Your Customer should be appended to rule 2010 rather than to proposed rule 2090.

Also, to the extent that minor changes are made to the document and information gathering requirements, we request guidance as to whether or not an associated person's attempt together the information proposed on the FINRA's model new account application will suffice and/or will be amended to reflect the regulator's expectations.

NAIBD supports modernization of the institutional customer suitability guidance, but objects to the added requirement that an institutional customer affirmatively forego the customer-specific suitability requirements. We believe that two of the three factors proposed by FINRA are adequate. Specifically, we believe that an affirmation is unnecessary if:

- the firm or associated person has a reasonable basis to believe that the institutional customer is capable of analyzing the risks of investments independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and
- the firm or associated person has a reasonable basis to believe that the institutional customer is exercising independent judgment in evaluating the recommendations.

Further, we assert that circumstances may exist in which the institutional party, and/or its agent (such as an investment adviser) would not be willing or able to affirm the waiver due to a variety of factors including contractual obligations, board or trustee limitations, among others.

Finally, contrary to the rule as proposed, NAIBD believes that the interpretive Memorandum 2310-3 definition of $10 million invested in securities and/or assets under management is a more appropriate standard for purposes of the institutional account suitability exemption and should be retained in the new rule rather than referencing the Rule 3110(c)(4) standard of at least $50 million in total assets. We believe that many highly sophisticated institutional brokerage customers would not satisfy the $50 million dollar asset threshold but would not need the protections of the suitability rule.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

// Lisa Roth //

Lisa Roth
Association Past-Chairman
Chair, NAIBD Member Advocacy Committee

June 23, 2009

Marcia E. Asquith
Office of the Corporate Secretary, FINRA
1735 K Street, NW, Washington, DC 20006-1506

Re: Please reference "FINRA Regulatory notice 09-25

Dear Mrs. Asquith,

I am a licensed insurance professional and registered representative who has been in business for over 30 years. I am a conservative planner with the fundamental belief of serving my clients' best interest.

The purpose of my letter is to express my strong objection to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Those who engage in misleading sales practices should be subject to prosecution and punitive sanctioning. This said, I do not believe that FINRA has jurisdiction over products and services which are not securities. Furthermore, I do not believe that FINRA or broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

This is a heavily-regulated industry. State insurance departments and other state regulators already provide comprehensive regulations to insurance and other non-securities products already are subject to comprehensive regulation at the state level. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements. Ultimately, this confusion would not serve the best interest of the public.

Lastly, policymakers currently are addressing these issues concerning the standard of care which broker/dealers and investment advisors owe to clients and considering whether such standards should be expanded or changed. Revising current suitability requirements while this debate is in process could confuse the issues, given that we may see changes instituted in the coming months.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for considering my views on this issue.

Regards,

Dan Russell

Daniel L. Russell, CLU
Chartered Financial Consultant

The Park at Warm Springs, 133 E. Warm Springs Road, Suite 102, Las Vegas, Nevada 89119 www.RussellFinancial.com
Phone (702)796-2020 Fax (702)796-8947

-----Original Message-----
From: eben.sales@rcn.com [mailto:eben.sales@rcn.com]
Sent: Thursday, June 25, 2009 3:51 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Eben H Sales Senior Financial Representative
2863 Hope Ridge Dr
EASTON, PA 18045-8150

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional ONLY, I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA's authority should not be expanded to include non-securities products and services.

The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, NO MORE REGULATION WOULD HELP THE CONSUMER!

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Eben H Sales, Senior Financial Representative
610-250-7543

From: David Salminen [mailto:d.salminen@ingfp.com]
Sent: Thursday, June 25, 2009 6:27 PM
To: Comments, Public
Subject: Rule 2111

I am opposed to an expansion of Rule 2111 to include "non-securities, services and strategies" - while I strongly support suitability requirements for other financial products such as fixed life insurance, or long term care insurance through existing entities, e.g. the state insurance commissioners, NAIC, et al. Creating overlaps in jurisdiction would seem to needlessly increase burdens on the brokerage industry, and most probably result in harm to my business as well as to consumers.

Sincerely yours,

David A. Salminen
Registered Representative
16000 SE Powell Blvd #39
Portland, OR 97236-1781

phone/fax: 503-762-6387
mobile: 503-593-9512
d.salminen@ingfp.com

Securities offered through ING Financial Partners, Inc. Member SIPC

INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

June 29, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Notice 09-25 Relating to Suitability and Know-Your-Customer Obligations of Members

Dear Ms. Asquith:

The Investment Company Institute[1] is writing to comment on FINRA's proposed consolidated rules relating to suitability and know-your-customer obligations.[2] As proposed, new FINRA Rule 2111 would consolidate and revise existing NASD Rule 2310 and NYSE Rule 405 relating to suitability, while new FINRA Rule 2090 would address members' know-you-customer responsibilities. The Institute supports the consolidation of these rules and the adoption of proposed Rules 2111 and 2090. We recommend, however, that Rule 2111 be revised to retain a provision relating to money market mutual funds that has been part of NASD's suitability rule since its original adoption almost 20 years ago. In addition, we recommend that FINRA clarify in the Supplementary Material to proposed Rule 2111 that suitability determinations will remain the province of the member. Each of these recommendations is discussed in more detail below.

---

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $10.18 trillion and serve over 93 million shareholders.

[2] *See* FINRA Notice to Members 09-25, *Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations* (May 2009).

MONEY MARKET FUNDS

In August 1990, the SEC approved amendments to a rule that that required NASD members to make reasonable efforts to obtain additional information pertaining to customer accounts.[3] Importantly, these amendments expressly excluded transactions and accounts in which investments were limited to money market mutual funds. While neither of the 1990 releases proposing and adopting[4] this requirement explains the basis for this exception, both expressly mention its existence.

As proposed, Rule 2111 would eliminate this exception for money market funds. FINRA's notice, however, fails to discuss or explain the elimination of this exception, and thus we are unable to determine whether it was inadvertent or deliberate. If deliberate, we are at a loss to understand the basis for its omission, particularly in the absence of objective evidence warranting a change to this long-standing exception. Had there been a history of problems with members making unsuitable money market mutual fund recommendations or making recommendations relating to money market mutual funds on the basis of insufficient information, we could perhaps understand FINRA requiring members to obtain additional information to address these concerns. Similarly, if FINRA had commenced enforcement proceedings, undertaken other actions, or communicated to members their concerns with members' use or abuse of this exception, its proposed elimination may be better understood. To our knowledge, there have not been any such proceedings, actions, or public statements in the almost 20 years this provision has been part of the NASD's rules that would warrant its elimination.

In the absence of objective evidence warranting its elimination, we recommend that the exception for money market mutual funds be retained in proposed FINRA Rule 2111(b). We also note that, every time FINRA or any other regulator imposes a new or additional duty on a member – regardless of how minor or minimal the duty appears – *it will result in additional costs to members*. For example, eliminating the money market fund exception will require FINRA members to revise their policies and procedures to begin collecting information from those customers who limit their investments to money market mutual funds – and FINRA has proposed to expand the types of information members must collect. The rule will also necessitate changes to the forms members use, the procedures used to review such completed forms, and the systems that process and maintain customer account information. Over time, the aggregation of seemingly insubstantial costs associated with individual regulatory proposals can be substantial. While elimination of the exception for money market funds may seem minor to FINRA, it will result in real costs to the industry, and the Notice fails to include *any* mention of the benefits sought to be achieved. Any costs associated with eliminating this exception should be affirmatively considered to determine whether they outweigh any supposed benefit to investors.

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[3] *See* NASD Notice to Members 90-52 (Aug. 1990). This rule later became NASD Rule 2310. The suitability rule was originally adopted as an amendment to Article III, Sections 2 and 21(c) of the NASD's Rules of Fair Practice.

[4] *See* NASD Notice to Members No. 90-52 (Aug. 1990).

RESPONSIBILITY FOR SUITABILITY DETERMINATIONS

We support FINRA consolidating in proposed Supplementary Material .02, "Components of Suitability Obligations," the three elements that have long comprised a member's suitability obligations.[5] We recommend, however, that FINRA affirm in this Supplementary Material that the responsibility for analyzing these three elements lies with the member and not FINRA. This clarification seems appropriate in light of FINRA's recent notice relating to suitability determinations in connection with "non-traditional ETFs," which appears to replace the ability of members to make determinations concerning the suitability of these products with the value judgment of a Government-registered association. In particular, FINRA Regulatory Notice 09-31 (June 2009), which was issued to remind "firms of sale practice obligations relating to leveraged and inverse exchange-traded funds," states in relevant part: "inverse and leveraged ETFs that are reset daily *typically are unsuitable for retail investors who plan to hold them for longer than one trading session,* particularly in volatile markets." [Emphasis added.] Such a definitive statement appears to usurp a member's ability to determine whether these products, or an investment strategy utilizing these products, are, in fact, suitable for a particular investor. We recommend that, as with previous notices issued by the NASD relating to suitability, instead of declaring certain products as *per se* unsuitable for certain classes of investors, FINRA instead clarify that suitability determinations remain the responsibility of the member. To the extent FINRA has concerns regarding recommendations involving specific types of securities, as in the past,[6] FINRA could provide members guidance regarding issues they should consider or due diligence they should conduct to fulfill *the member's* suitability determinations, rather than defining such securities as *per se* unsuitable for certain classes of investors. We additionally recommend that FINRA withdraw Regulatory Notice 09-31 and, if necessary, instead issue a notice that both recognizes the responsibility of the member to make suitability determinations and provides meaningful guidance relating to recommendations involving non-traditional ETFs.

[5] These three suitability obligations are reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

[6] *See, e.g.,* NASD Regulatory & Compliance Alert (Summer 2000) (providing members guidance of the factors to consider when recommending multi-class funds); NTM 03-07 (Feb. 2003) (reminding members of issues to consider in conducting reasonable-basis suitability and customer-specific suitability when recommending hedge funds); NTM 95-80 (Sept. 1995) (reminding members of their obligations in recommending the purchase of mutual funds); and NTM 94-16 (reminding members of suitability considerations when selling mutual funds to elderly, retired, or first-time investors).

For all of the above reasons, the Institute respectfully recommends that proposed Rule 2111 be revised to retain the existing, and long-standing, exception for transactions with customers where investment are limited to money market mutual funds. We additionally recommend that the proposed Supplementary Material .02 be revised to affirm that the responsibility for making suitability determinations lies with the member.

Sincerely,

/s/ Tamara K. Salmon

Tamara K. Salmon
Senior Associate Counsel

From: Landon Samuel [mailto:landon.samuel.c9mp@statefarm.com]
Sent: Friday, June 26, 2009 10:30 AM
To: Comments, Public
Subject: Regulatory Notice 09-25 -- I oppose expansion of Suitability obligations to recommendations that DO NOT involve securities

I am a licensed insurance professional and registered representative. I am supportive of accountability guidelines and obligations that require documented suitability of securities products. However, I OPPOSE EXPANSION OF SUITABILITY OBLIGATIONS TO INCLUDE RECOMMENDATIONS THAT DO NOT INVOLVE SECURITIES.

I encourage you not to expand FINRA's suitability obligations at this time.

Thank you for considering my comments.

Landon Samuel

Clarksville, IN

National Association of Insurance and Financial Advisors

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

June 29, 2009

Marcia E. Asquith
Deputy Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Via Electronic Mail: pubcom@finra.org

Re: FINRA Regulatory Notice 09-25 -- Request for Comments on Expansion of Suitability Obligations

Dear Ms. Asquith:

This letter presents the views of the National Association of Insurance and Financial Advisors ("NAIFA") in response to FINRA's invitation to submit comments on the issue of "whether it 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."

NAIFA comprises more than 700 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's oldest and largest trade association of insurance and financial services professionals. The Association's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. 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. Over half of all NAIFA members are licensed as registered representatives of broker-dealers and market and service mutual funds.

FINRA recently issued Regulatory Notice 09-25, in which FINRA proposes to consolidate FINRA rules governing suitability and know-your-customer obligations. NAIFA agrees with the general spirit of the proposed rule change, and recognizes the importance of investor protection. Indeed, we applaud and support FINRA's continued efforts to safeguard investor interests. However, of particular concern to NAIFA and its members is that part of Notice 09-25 in which

FINRA asks for comments as to whether FINRA should expand its suitability obligations to all recommendations of investment products, services and strategies, regardless of whether they include securities.

NAIFA's concerns are based on our belief that the expansion by FINRA of its suitability obligations beyond recommendations involving securities products would be both unnecessary and inappropriate. The result of broadening the scope of the suitability obligations would appear to 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 or not the recommendation involved securities. NAIFA believes that requiring registered persons to conduct suitability analyses for non-securities products would waste valuable resources, provide no benefit to the consumer, and likely be rendered moot by changes to the financial regulatory system currently being considered by policymakers.

NAIFA therefore opposes expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Our comments will focus on the following points:

- First, FINRA does not have jurisdiction over products and services that are not securities and its authority should not be expanded to include such products and services. FINRA lacks the resources and expertise to oversee non-securities products, and this change would make oversight of the products currently within its jurisdiction less effective. Additionally, brokerage firms themselves may not be qualified for this undertaking, and there is no reason brokerage firms should be supervising non-brokerage activities and transactions.

- Second, insurance (including fixed annuities) and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in duplicative or conflicting regulatory requirements. In light of the existing system of comprehensive state level supervision, the expansion of FINRA's suitability obligations is unnecessary and will provide no additional protection for the consumer.

- Third, the additional costs and burdens associated with expanding FINRA's suitability obligations to apply to products, services and strategies that do not involve securities will likely have an adverse impact on the level of services available to mid- and small-market clients and accounts.

- Fourth, broad changes to the current regulatory system for broker/dealers and investment advisors are being contemplated by policymakers, and an effort by FINRA to revise suitability requirements may quickly become moot.

1. **The suggested expansion of FINRA's suitability obligations is not within FINRA's jurisdiction and would result in costly duplication, inefficient application, and ineffective oversight.**

The proposal suggests expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over transactions, products and services that do not involve securities and this change would give FINRA power beyond its mandate.

The proposal 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 immediately understand the multitude of products that FINRA will likely classify as "investment products" in sufficient detail to accurately determine the suitability of a product or recommendation.

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. **The proposal is duplicative because insurance and other non-securities products are already subject to comprehensive regulation by state regulators.**

For insurance agents, the proposal is duplicative 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 application of FINRA rules to these products 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.

The proposal will provide no additional protection for the customer, because of the existing system of supervision and the relatively low risk of non-securities transactions. FINRA is considering fixing something that is not broken, and there is no need to increase the amount of oversight over products that are already subject to a comprehensive regulatory structure.

3. **Expanding FINRA's suitability obligations to apply to products, services and strategies that do not involve securities will likely have an adverse impact on the level of services available to mid- and small-market clients and accounts.**

Expanding the scope of suitability obligations in the manner suggested by FINRA would have the unintended consequence of leaving mid- and small-market clients and accounts

with fewer options available for financial representation and with a lower level of client services if they are able to find someone willing to work with them. If suitability obligations and responsibilities are broadened in the manner being considered, many registered representatives would likely drop their registrations altogether or stop serving the middle and lower market clients and accounts. This is due to the fact that serving the middle and lower markets would no longer be cost effective for many registered persons, due to the additional costs, expenses, potential for liability and administrative burdens associated with the expansion of suitability obligations. Consumers will not be placed at risk if the scope of these suitability obligations is not expanded; as indicated above, consumer interests are effectively protected by the comprehensive state regulatory system that is already in place.

4. **The timing of the proposal is inappropriate because policymakers are currently debating broad changes to the existing regulatory system for broker/dealers and investment advisors.**

As a final point, broad changes in financial regulation are currently being contemplated by policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders. In addition to considering major reforms to the structure of the regulatory system, these policymakers are debating issues concerning the standards of care that broker/dealers and investment advisors owe to their clients, and considering whether such standards should be expanded or changed going forward.

It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, as further broader-scale changes may be made within a matter of months.

* * *

In sum, NAIFA strongly urges that FINRA not consider expanding suitability obligations to cover all recommendations of investment products, services and strategies made in connection with a firm's business. 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

From: Kendall Schlake [mailto:Kendall.Schlake@fbfs.com]
Sent: Tuesday, June 23, 2009 12:19 PM
To: Comments, Public
Subject: Expanding FINRA Suitability Obligations

Dear Sirs,

I am a licensed multi-line insurance agent and Registered Rep. from a small town in Nebraska and have been so for over 20 years. I am writing to strongly oppose the expansion of suitablity regulations to areas that do not involve securities.

To be brief, I currently do suitability requirements for my clients as instructed by FINRA. To expand those areas to non-security related products would be doubling up the regulation as those areas are already monitored by state agencies and are not areas FINRA has expertise.

Finally, being in business in a small town, I handle the complete package of insurance affairs for my clients due to our location. If my recommendations are not appropriate, I have to live with it because I live where my clients live and work. Excessive regulation will not increase the degree at which I scruitinize every recommendation I make for my clients.

Sincerely,

Kendall Schlake, LUTCF
Career Agent
Farm Bureau Financial Services

Registered Representative/
Securities & services offered through
Equitrust Marketing Services, LLC*
5400 University Ave
West Des Moines, IA 50266
877/860-2904, Member SIPC

From: michael.schmitz@sgc-financial.com [mailto:michael.schmitz@sgc-financial.com]
Sent: Tuesday, June 23, 2009 2:26 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Michael Schmitz
3 Waters Park Dr, #115
San Mateo, CA 94403-1162

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Allow me to clearly state that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Best regards,

Michael Schmitz

-----Original Message-----
From: Thomas.Schreiner@KOFC.ORG [mailto:Thomas.Schreiner@KOFC.ORG]
Sent: Tuesday, June 23, 2009 2:41 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Dear FINRA,

Please do not extend your suitability obligations. If you extend your suitability obligations to non-securities products - where does it end.
Please clean up the mess that is happening in your industry now. You should be able to know and stop all the stock market ponzi schemes in their infancy stages. This should be your priority.

If you can't control your industry - then how do you expect to regulate non-security industries? FINRA needs to concentrate on all the stock fraud that is going on to help the consumer.

I filed a complaint with FINRA several years ago about an IRA that my wife and I own that is presently with E*Trade. For 3 years we have been trying to move the money to our Janus account. We provided the proper documentation on 3 different occasions all with a signature guarantee.
E*Trade will not move our money over. I spoke to their manager - and he laughed and said he can't find the paperwork. I've asked FINRA to help me and nothing. FINRA does not help the consumer! All you do is protect the big companies.

Do not get involved in non-securities products! Do not pass Notice 09-25!

Thank you for your time and courtesy.

Thomas & Wendy Schreiner
1037 Coolidge St.
Westfield, N.J. 07090

-----Original Message-----
From: David Schuman [mailto:dschuman@farmersagent.com]
Sent: Tuesday, June 23, 2009 10:10 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am an insurance agent and Registered Rep in Yuma, Arizona. Before FINRA expands its scope, I believe the agency would do better to concentrate its focus on business within its current purview.

Respectfully,

David M Schuman, CLU

From: jerry.schutte@nmfn.com [mailto:jerry.schutte@nmfn.com]
Sent: Tuesday, June 23, 2009 10:48 AM
To: Comments, Public
Subject: expansion of suitability requirements

To whom it may concern;

Re quest that you wait to change regulatory requirements on non security items until the debate is complete regarding the overall oversight of the financial industry.

Jerry Schutte

Jerry A. Schutte,

Wealth Management Advisor

85 Campau NW; PO Box 295

Grand Rapids, MI 49501-0295

616.774.2031, x2076;

616.456.1643 (fax)

jerry.schutte@nmfn.com

or our Financial Representatives, please click the following link:"E-Mail Opt-out from Northwestern Mutual"

In the event that you cannot click on the above link, the Northwestern Mutual E-Mail Opt-out form can be found at the following URL: https://service.nmfn.com/cbpeopt/EmailOptOut.do.

Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Steve Van Scoik [mailto:steve@holmesinsurance.com]
Sent: Thursday, June 25, 2009 4:39 PM
To: Comments, Public
Subject: Expansion of Suitability Obligations to Recommendations that do NOT Involve Securities

Dear Ms Asquith
Office of the Corporate Secretary, FINRA

I am a licensed insurance professional and registered representative and am opposed to FINRA expanding their control over products that are not security products. Non-security products are already heavily regulated by State regulators and if FINRA provides additional oversight then there is a duplication of effort with more than one agency. Our products are regulated enough. For those who abuse the system please go after them and prosecute them. For the 99% who are honest hard working advisors please do not complicate an already complex system. Your oversight over non-securities would be like having FINRA supervise all life insurance companies and representatives. There are already too many overlaps and need to provide multiple agencies with compliance issues as demonstrated by the life companies demanding individual company training with Money Laundering. I find myself having to take three tests to provide evidence to the securities industry and two other test to meet different insurance company requirements. WHERE DOES IT ALL END? That vast majority of representatives do a wonderful job for their clients and are totally trustworthy. Start prosecuting the perpetrators and not the saints!

Please do not grant authority for FINRA to have oversight on NON-security products.

Steve Van Scoik
PO Box 1886
Elkhart, IN 46515-1886
574-294-7612
574-293-1738 Fax
800-837-7612
steve@holmesinsurance.com
Registered Representative

-----Original Message-----
From: mscott@headleyscott.com [mailto:mscott@headleyscott.com]
Sent: Tuesday, June 23, 2009 8:11 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Mark Scott
12110 Port Grace Blvd
La Vista, NE 68128-3190

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I write to you today to object to the expansion of FINRA's suitability obligations being proposed. I am a licensed insurance professional and registered representative.

While I firmly believe there may be a few advisors promote unsuitable sales practices and/or use misleading sales practices, they are certainly far and few, these advisors should be prosecuted and face sanctions.

FINRA, in current capacity does not have jurisdiction over non-security products and services. These products and services are already regulated by the states through the state insurnace departments and other state regulators. Expanding FINRA's authority would mean duplication in efforts between states and FINRA which can lead to conflicts and confusion between the entities, not to mention the consumers being confused.

Neither FINRA or Broker/Dealers have sufficient resources or expertise necessary for proper oversight. Putting resources in place, which are already in place by the states, may lead to higher expenses for the consumer in the end.

It is my understanding as well there is debate by several entities regarding the standard of care broker/dealers and investment advisors owe their clients and considering whether standards need expanded or changed in the future. With these debates ongoing, it would be premature for FINRA to expand it's scope as additional broader-scale changes may be coming soon.

Again, I urge you not to expand FINRA's suitability for the reasons above.
Thank you for considering my views on this issue.

Sincerely,

Mark Scott
402-763-9000

-----Original Message-----
From: goracin94@yahoo.com [mailto:goracin94@yahoo.com]
Sent: Friday, June 26, 2009 9:36 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Theodore Scroback
2851 Norris Freeway
Andersonville, TN 37705-3906

June 26, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA's authority should not be expanded to include non-securities products and services.

I urge you NOT to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Theodore A. Scroback
8654940702

From: Vicki.Seedhouse@thrivent.com
Sent: Tuesday, June 23, 2009 11:04 AM
To: Comments, Public
Subject: Expansion of Suitability Obligations

Attachments: pic24021.jpg


pic24021.jpg (11 KB)

I am a CFP, a licensed insurance professional and a registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to include recommendations that do not involve the purchase of securities.

Let me start by saying that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and be subject to meaningful sanctions. I also believe that equity indexed annuities should be regulated and should fall under the heading of securities. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

Victoria M Seedhouse, CFP®,CLU,FIC
Senior Financial Consultant
Northern Rocky Region
Yellowstone Financial Consultants
Thrivent Financial for Lutherans®

19 36th St W Ste 2, Billings, MT 59102-4303
Office: 406-294-6401
Fax: 406-294-6400
Email: vicki.seedhouse@thrivent.com
Web Address:vicki.seedhouse@thrivent.com

recorded and is subject to review, monitoring and/or disclosure to someone other than the recipient.

Please do not use e-mail to request, authorize or effect the purchase or sale of any security, to send fund transfer instructions, or to effect any other transactions. Any such requests, orders or instructions that you send will not be accepted and will not be processed. If you need immediate assistance with your brokerage account, please call 1-800-THRIVENT, and say "Securities Brokerage Services".

(Embedded image moved to file: pic24021.jpg)

From: Jeff Sella [mailto:JSella@SPCFinancial.com]
Sent: Saturday, June 27, 2009 1:06 PM
To: Comments, Public
Subject: Proposed Rile 2111

Over the past several months I have read many articles on the current limitations of the current suitability rules and the proposals that have been discussed or enacted by various organizations. In general these discussions have highlight two major flaws in the current regulations.

The first flaw is that the current suitability rules are not appropriate. The CFP went and created a "fiduciary standard" and the SEC has also suggested something similar. A fiduciary standard is much broader and seems more appropriate than the current suitability rule.

The second weakness is that there are financial planners that are regulated by the SEC, while others are regulated by FINRA, while others are simply insurance licensed and some are not licensed at all. A consumer may not always know which rules their advisor may be operating under and may assume that they are operating under one set of rules when, in fact, they are operating under a second set of rules.

Your proposed rule might be your attempt to move the FINRA rules closer to the CFP rules but suffers some practical hurdles. For one, you assume that a client fully discloses all relevant information and can properly convey their risk tolerance levels. Unfortunately many clients thought that they were more comfortable with risk in the 1990's than they actually were. Many wanted exposure to technology stocks and some went elsewhere when we discouraged these investments. In 2001, 2002, and 2003 we acquired clients that could not believe that they experienced the losses that they did and we can only speculate whether they were at fault or if their previous advisor was at fault. After the stock market plunge in 2008 many clients are now stating that they are more risk averse. Therefore, I feel that it is almost impossible to determine in hindsight what a client's risk tolerance level really was.

I also do not think that our recommendations should be expanded to include information known to my broker dealer or other associated persons. There are numerous problems with this requirement. The first would mean that I would need to periodically request that my broker dealer disclose any and everything that they may know about everyone of my current and prospective clients. I cannot imagine how burdensome that would be on them. Furthermore I would need to determine if the information provided is still accurate and appropriate which would create an additional burden on my firm and on our clients. Furthermore, I am unsure how this rule would conflict with confidentiality rules that current govern our disclosure of information provided to me by our clients. For example, a CPA practice is affiliated with our firm. Under IRS regulations this

firm cannot release any information provided as part of the tax engagement to any other entity without the client's written authorization. Would SPC now have a legal liability for not including that information in their recommendations when the client has not authorized the release to SPC?

I support the overall goal of bringing all financial advisors, regardless of license, under one set of rules. Unfortunately this proposed rule does not accomplish that and creates some regulatory pitfalls that I find problematic. I would be happy to further clarify any points raised.

Thank you for your consideration of the points raised in this e-mail

Edward G. Sella, CPA/PFS, CFP

SPC Financial, Inc.
Independent Registered Investment Advisor/SEC
3202 Tower Oaks Blvd. Suite 400
Rockville , MD 20852

301-770-6800

Sapientes Paratique Consuasores (SPC)

www.spcfinancial.com

Gregory C. Sernett, JD
Vice President
Chief Compliance Officer

AMERITAS INVESTMENT CORP.
Member: FINRA and SIPC

5900 O Street / Lincoln, NE 68510-2234
Bus: 402-467-7853 / Toll Free: 800-338-9868 ext. 87853 / Fax: 402-325-4212 / E-mail: gsernett@ameritas.com

June 25, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re:

Dear Ms. Asquith:

Ameritas Investment Corp (AIC) is dually registered as a broker/dealer member of FINRA, as well as a federally registered investment adviser with the Securities and Exchange Commission. We have approximately 1800 financial advisors appointed to represent us. We are writing to express our concerns about FINRA's proposal regarding consolidation of FINRA rules governing suitability and know-your-customer obligations (Proposed Rule 2111).

We oppose FINRA's effort to expand suitability requirements to non-security investment products or services. As an independent broker-dealer firms vigorously oppose efforts to expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, we oppose FINRA's suggestion that it expand the 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.

We oppose the expansion of suitability criteria to include portfolio level concerns. A client's investment time horizon, liquidity needs, and risk tolerance are important considerations. However, we believe they are best judged at the portfolio level. The Proposed Rule would instead require each securities transaction to be suitable based upon these additional criteria. We believe this would have unfortunate unintended consequences for investors who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods.

We also oppose the expansion of the suitability review to information known by the Broker-Dealer. Independent financial advisors appointed with AIC operate their own small businesses in communities throughout the country. They can compete with other financial advisors who are registered with AIC. As a result, it is quite possible for an independent broker-dealer's records to include information about a client that was collected by one financial advisor, but unknown to the client's current financial advisor. The Proposed Rule would require independent broker-dealers to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. We believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection. We, therefore, oppose this aspect of the Proposed Rule.

As a final observation, 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. The resolution of this debate has the potential to make the Proposed Rule a moot point. As a result, we urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

Thank you for your consideration of this letter.

Sincerely,

Gregory C. Sennett
Vice President & Chief Compliance Officer

NFA NATIONAL FUTURES ASSOCIATION

June 29, 2009

Via E-mail (pubcom@finra.org)

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

The Regulatory Notice referenced above requests comments on 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." National Futures Association (NFA) appreciates the opportunity to comment on this issue.

As a registered futures association under the Commodity Exchange Act (CEA) and a self-regulatory organization for the futures industry, NFA regulates the more than 50,000 registered associated persons (APs) who solicit futures or options orders or accounts for transactions on regulated futures exchanges. Customer protection is our number one priority, and our rules governing AP sales practices play a crucial role in achieving that goal.

In 1985, NFA's Board of Directors adopted a Know-Your-Customer rule (NFA Compliance Rule 2-30) that provides protections comparable to FINRA's suitability rule but that are tailored to the unique requirements of the futures industry. In the securities industry, investors can purchase a wide variety of securities with varying degrees of risk potential that serve very different investment objectives. In contrast, all futures contracts are highly volatile and risky instruments. It makes no sense to say that a customer is suitable to invest in heating oil futures but not in Treasury note futures. Instead, the determination has to be made on a customer by customer basis rather than a contract by contract or transaction by transaction basis.

NFA's Know Your Customer rule requires each Member to obtain extensive information about each customer's experience, income, net worth and age before opening an account. Based on that information, the Member has to make a

NFA

judgment as to the amount of disclosure that is adequate and must decide whether the customer requires additional risk disclosures beyond the standard disclosures required by CFTC regulations. In some cases, the only adequate risk disclosure that the Member can provide is that futures trading is too risky for that customer. This is true even if the Member makes no recommendations whatsoever to the customer.

Additionally, another important protection for futures investors is NFA Compliance Rule 2-29, which governs both oral and written communications. Among other provisions, it prohibits misleading or high-pressure communications. In our experience, most customers who invest in inappropriate products do so either because they do not take advice or recommendations from anyone—in which case FINRA's suitability rule would not apply—or because they were misled about the risks or high-pressured into investing. Compliance Rule 2-29 prohibits these later practices and has been an effective means of dealing with rogue brokers who convince people to invest in the futures markets when it is not appropriate for them.

NFA has also been in the forefront of cracking down on rogue brokers through its enhanced supervision rule. Since 1993, Compliance Rule 2-9(b) has required certain firms to tape record all of their conversations with customers. This requirement has proven to be an effective deterrent against fraudulent behavior and high-pressure sales as well as a powerful investigative tool in the handful of cases where it does not have the desired deterrent effect. Not surprisingly, there has been a greater than 60% drop in the number of problem APs since the rule became effective. NASD was no doubt aware of NFA's successful track record when it adopted its own rule several years later.

The numbers show that NFA's sales practice regulation has been highly effective. Since 1985, trading volume on U.S. futures markets has increased by almost 1700%, while customer complaints have actually dropped approximately 66% (as measured by the total number of reparation and arbitration proceedings filed annually). Obviously, NFA's Know-Your-Customer rule is only part of that picture, with our other sales practice rules and enforcement efforts playing an equally significant role. Still, the bottom line is quite clear: NFA's existing regulatory program protects customers quite well, and a suitability rule triggered by a recommendation and based upon product type is not a workable framework for the futures industry and would provide no additional customer protections.

As you can see, the sales practices of futures APs who are employed by dual NFA/FINRA members are already subject to a comprehensive and effective regulatory regime. Applying FINRA's suitability standards to regulated futures products would result in duplicative, confusing regulatory requirements for these registrants without a corresponding increase in customer protection. Therefore, FINRA should not even consider expanding its suitability requirements to regulated futures products.

NFA

Thank you for the opportunity to comment on this issue. If you have any questions, or if we can be of any further assistance, you can contact me by e-mail at tsexton@nfa.futures.org or by telephone at 312-781-1413.

Very truly yours,

Thomas W. Sexton
Senior Vice President
& General Counsel

(kpc/CommentLetters/FINRA Suitability Rule)

From: Shah, Mansukh [mailto:mansukh.shah@axa-advisors.com]
Sent: Wednesday, July 01, 2009 3:19 PM
To: Comments, Public
Cc: cgcrandall@usadatanet.net; naifanewyork@aol.com
Subject: FINRA REGULTORY NOTICE 0925

I would like to express my opposition to FINRA's wanting to regulate non-security products such as life insurance and fixed annuities. We have never had any problems with these products which have been around for 100 years. The real problems have been with Mutual Funds and other variable products. It is my opinion that you are unable to control and regulate the current products let along take on additional responsibilities for products that are regulated by the Insurance Department in each state. I am an insurance professional and registered representative for the last 32 years. Why do you feel the need to duplicate what is already being done on the state level adding another layer of regulatory body.

In keeping with the responsibilities of your position, in putting your efforts where they belong, in regulating investment frauds, we might have saved many investors from the Bernard Maddoff's of the world.

Mansukh J. Shah, CLU, ChFC
AXA Advisors, LLC
500 S. Salina St., Suite 220
Syracuse, NY 13202
315-234-0104 - Phone
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mansukh.shah@axa-advisors.com

redefining / standards

From: Scott Shewan [mailto:scottshewan@att.net]
Sent: Friday, June 26, 2009 2:37 PM
To: Comments, Public
Subject: Regulatory Notice 09-25--Suitability and Know-Your-Customer

Dear Ms. Asquith:

As an attorney who represents public investors in claims against their financial advisors and brokerage firms, I wish to state my overall support of the proposed rules set forth in this regularoty notice. As one of the authors of PIABA's comment letter on this rule, I wish to echo the comments set forth therein.

I note that you have also requested comment as to whether the suitability rule should be limited to transactions and strategies "involving securities." I believe that any attorney who represents members of the public in these cases would agree that the suitability rule should be expanded to cover all of the financial products and services marketed by FINRA member firms, whether they are securities or not. Many insurance-type products, such as equity indexed annuities and life insurance, are marketed bt FINRA members as "investments." This being the case, the suitability obligation should equally apply to those recommendations.

I hope that FINRA will revise these rules in the interest of public investors, then submit them to the SEC for speedy approval.

Scott R. Shewan
Born, Pape & Shewan LLP
642 Pollasky Avenue, Suite 200
Clovis, California 93612
Phone (559) 299-4341
Fax (559) 299-0920

Allen, Donna

From: Birgitta Siegel [bksiegel@law.syr.edu]
Sent: Wednesday, July 01, 2009 4:56 PM
To: Comments, Public
Attachments: Proposed FINRA suitabilityRules -siegeltF.pdf

Attn: Ms. Marcia E. Asquith.

SYRACUSE UNIVERSITY
COLLEGE OF LAW
OFFICE OF CLINICAL LEGAL EDUCATION

June 29, 2009

Ms. Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

RE: 09-25 Proposed Consolidated FINRA Rules Governing Suitability (Rule 2111) and Know -Your -Customer Obligations (Rule 2090)

Dear Ms. Asquith:

The Securities Arbitration and Consumer Clinic (SACC), of the Syracuse University College of Law, welcomes the opportunity to comment on FINRA's Proposed Rules 'Governing Suitability and Know-Your-Customer Obligations', Rules 2111 and 2090 respectively.

The SACC generally supports these rule proposals. They reflect a more principled approach in dealing with suitability obligations that do the existing rules. In addition, the SACC offers a few suggestions to specific provisions, as discussed below. Finally, per the request in 09-25, we are pleased to briefly comment upon whether FINRA should propose a rule regarding suitability obligations for investment s recommendations made in connection with a member's business, regardless if the recommendations involve securities.

The SACC is a Syracuse University Law School curricular offering in which law students provide representation to public investors, most of whom would be unable to hire private counsel. We have helped several investors who lost lump sum retirement packages to investments in variable annuities, senior investors who were targeted by promoters of unregistered viatical investments, and numerous others investors with a range of problems. The majority of our clients are seniors residing in Central/ Upstate New York. The SACC is very proud of its education programs, wherein we provide the public with basic investment information and awareness of resources. FINRA's proposed Rules are of extreme importance to our clients and community.

Proposed Rule 2111(a) Clarifies Some Important Suitability Obligations

The SACC supports proposed Rule 2111(a). It clearly directs member firms/associated persons to conduct suitability assessments when recommending investment *strategies*, as well as when recommending isolated trades or a series of trades. Currently, the NASD Suitability Rule 2310 is limited to recommendations concerning the "purchase, sale or exchange of any security", and is silent on the duties surrounding strategy recommendations. Yet, investment strategies are often recommended in today's markets. Moreover, member firms advertise their abilities to deliver custom made portfolios (presumably based upon a strategy) for any circumstance the investor might face. The days of ad hoc trades are long gone for many if not most retail investors. As such, the existing suitability rule is quite outdated and should be replaced in accordance with FINRA's proposal. We offer suggestions on other points of 2111(a) below.

Furthermore, proposed Rule 2111(a) more accurately tracks existing decisions from the SEC, and from FINRA itself, concerning recommendations of investment strategies. *See, e.g. F.J. Kaufman & Co.,* Securities Exchange Act Release No. 34-37535, 45 S.E.C. Docket 97 (Dec. 13, 1989) (broker's recommended "strategy was less than the value of one of its parts, and Kaufman should have known that fact and should have understood that his strategy was therefore unsuitable for these customers"); NASD IM- 2310-3 (institutional customer IM explains that firms have suitability duties when recommending a security or strategy),

The SACC also supports FINRA's delineation in Rule 2111(a) of nine key factors to be considered by the member firm/ associated person when making recommendations. This list of from existing factors listed in NASD Rule 2310(b) should help industry personnel to better grasp the range and nature of investigations that accompany a meaningful suitability assessment. We further support the proposed Supplementary Materials, with one caveat concerning a portion of the Quantitative Suitability component in 2111.02.

SACC Proposals

I. Rule 2111(a) - Factors Not Exhaustive

We believe the Rule would be further improved by a brief addition explaining that the rule's list of nine factors is not intended to be exhaustive.

We suggest another minor improvement to the final clause of 2111(a). Specifically, the final clause would better serve its purpose if the 'other information' to be considered is pegged to what a diligent, or 'reasonable member firm', 'reasonable associated person' would consider when making a recommendation. The 'reasonable member' standard would provide more guidance than the currently proposed subjective standard of "the [any] member". The subjective language currently in place could create confusion. In its present form, the clause could allow reckless or careless members/brokers, to ignore, pertinent "other information" that a reasonable member would not ignore. This gap can easily be closed.

II. The SACC Submits That 'Hold' Recommendations Belong Within Rule 2111(a)

Neither the current rule nor the proposed rule addresses unsuitable "hold" recommendations. We urge FINRA to include 'hold' recommendations within the scope of proposed Rule 2111(a).

At the SACC, and in private practice, we have seen many cases where a broker affirmatively advises a client to 'hold' a position, or an entire portfolio, thereby presenting the client with a definite investment decision. Average investors regard members/associated persons as having superior skill and knowledge. Not surprisingly, these retail investors consider all member/broker recommendations, whether to buy, sell or hold, as investment advice from the professionals. Yet, the members/brokers sometimes pay scant attention to the gravity and obligations surrounding hold recommendations. As a practical matter, 'hold' recommendations are not going to appear as a trade on records the member may use for supervisory purposes. Nor has FINRA included recommendations to hold within its primary suitability rule 2310. By putting explicit language regarding 'hold' recommendations in what will likely be FINRA's cornerstone for guidance on suitability questions, FINRA can provide clarity within the industry and further protect the retail investor.

Perhaps the member/associated person's obligations regarding 'hold' recommendations is contemplated as a 'strategy' within the proposed rule. Certainly the obligations would be subsumed within concepts of 'fair dealing', which we are very pleased to see incorporated within the proposed Supplementary Materials. Nevertheless, the SACC submits that 'holding' recommendations are common, sometimes signaling a shift in goals or strategies, and warrant express treatment.

We note that a recommendation to 'hold' should not be confused or equated with legal theories of a duty to monitor. The former reflects a definitive act by a member/ associated person. In contrast, the latter theory – not at issue here- generally arises under contract.

One does not have to look far for examples of public harm caused by unsuitable 'hold' recommendations. Classic 'pump and dump' schemes sometimes utilize 'hold' recommendations, as well as 'buy' recommendations, to drive up, and hold up, the price of stock for the benefit of the seller in waiting . Deceptive hold recommendations in these cases would necessarily be unsuitable. Similarly, the Research Analysts scandals which were resolved through the 2003 Global Settlement, although prosecuted as conflicts of interest cases, did in part involve deceptive recommendations to 'hold', or to remain 'neutral', thereby wreaking havoc throughout the retail markets. While these schemes may be extreme, and hopefully will remain few in number, they seem to highlight the need for a bright line rule regarding hold recommendations.

In the context of arbitration practice, we sometimes see dire consequences when an investor relies on a broker's careless hold recommendations. Over the decades, the undersigned has seen more than a few instances where a broker persuades a customer to hold, despite countervailing wishes of the customer. For example, there have been instances when a broker urges a client to

'hold', when the client otherwise was planning to sell and spend invested funds, so that the broker can retain an impressive ' book' of business while marketing himself to a potential employer. These situations and other examples will undoubtedly continue to occur.

. We recognize that over the years, industry lawyers and associated persons have adopted as [mistaken] dogma the incorrect idea that suitability considerations do not apply when recommending that a 'hold'.. This may be due in part to a flawed reading of *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), wherein the Court limited standing under SEC Rule 10b-5 to actual purchasers or sellers of the security. Not only did the Court limit its holding to 10b cases, it expressly noted that claims for inaction are sometimes available under state law.[1] If FINRA were to be guided by case law on this question, we submit it weighs in favor of common law principles cited herein. However, and more importantly, we submit that FINRA's role is distinct from, and independent of, the lawyers in the trenches. FINRA's primary role is of course the protection of investors, through various mechanisms. We submit that investor protection can only benefit by including 'holding' recommendations clearly within the proposed rules/materials. Omission of such recommendations, on the other hand, will create more confusion and lack of diligence within the industry.

Another way to include hold recommendations within FINRA's current proposal would be simple to incorporate the define the term 'recommendation', in accordance with Incorporated NYSE Rule 472.10/09, which states in part :

> "Communications with the Public-Definitions" ...a recommendation is "any advice, suggestion or other statement, written or oral, that is intended, or can reasonably be expected, to influence a customer to purchase, sell or **hold** a security."

III. Quantitative Suitability

The Supplemental Material as concerns Quantitative Suitability is too restrictive in our view. By requiring that a broker have actual or de facto control over an account before he can be obligated to assess quantitative suitability imposes, we believe, a new restriction that in effect unravels much of what is accomplished by Proposed Rule 2111(a). Moreover, this restrictive language runs counter to existing guidelines from the SEC. *See James B. Chase*, Exchange Act Rel. No. 47476 (Mar. 10 2003); *see also John M. Reynolds,* 50 S.E.C. 805, 809 (1992) (regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent

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[1] The majority of state courts that have considered the issue have recognized a cause of action for the wrongful inducement to "hold" a stock. *See E.g. Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 132 Cal. Rptr. 2d 490, 65 P.3d 1255 (Cal. 2003) (the California Supreme Court recognized a cause of action in favor of holders of securities and found that the tort of fraudulent misrepresentation applied in connection with a decision not to sell securities based on a defendant's misrepresentations); **New York:** *Continental Insurance Co. v. Mercandante*, 222 A.D 181, 183, 225 N.Y.S. 488, 493-494 (N.Y. App. Div 1927) (seminal case recognizing "Holder" claim from fraudulent inducement of retaining a security); Marbury Mgmt., Inc. v. Kohn, 629 F.2d 705, 708-710 (2d Cir. 1980) (discussing favorably long history of decisions recognizing liability for fraudulently induced retention of securities).

with customer's financial situation), *amended on other grounds*, Exchange Act R. No. 300036A(Feb. 25 1992), 50 SEC Docket 1839.

Whether a member/associated person has control over an account should not relieve him of his obligations. Otherwise, he more resembles an order taker. The language concerning control or de facto control should simply be eliminated from this section.

Retention of the ' Know Your Customer' Rule is Essential

The SACC generally supports Proposed Rule 2090, formerly NYSE Rule 405, and submits a few remarks for consideration.

The proposed Rule 2090 s applies to "every customer, every account", and is not limited to "recommendations" as is the Proposed NASD Rule 2111(a). Subject to a comment below, inclusion of this Rule in the Consolidated FINRA Rulebook reflects significant commitment to recognize fundamental obligations of FINRA members and associated persons. We agree that the Know Your Customer obligation arises at the beginning of customer/broker relationship *before* a recommendation, if any, has been made. Currently, no FINRA rule protects customers who allege unsuitable transactions/investments in the absence of a recommendation. We note with approval FINRA's statement in 09-25 to the effect that diligence obligations arise from the inception of the broker/customer relationship.

SACC also notes with approval that, under Rule 2090, the member or associated person is required to know and retain the essential facts about a customer concerning the opening and maintenance of every account. The language "maintenance" (of every account) imposes an on-going obligation on the broker-dealers. Now, broker-dealers must take steps (use due diligence) to learn/know about material changes, if any, in the investment objectives or financial circumstances of their customers throughout.

Furthermore, proposed Rule 2090 will properly extend to all member/associated persons, and not just to NYSE members who are subject to NYSE Rule 405. This is a very positive step.

Proposed Rule 2090 Should Retain More of NYSE 405

The SACC would urge FINRA to retain that potion of NYSE 405 which requires firms to know essential facts concerning every 'order'. This omitted language is necessary to clarify that members/associated persons must use due diligence when assessing or recommending securities to the customer. By eliminating that language in Rule 2090, FINRA may be inadvertently narrowing obligations that exist in 405, and in other materials within existing FINRA materials. To avoid ambiguity, we propose that the original language of NYSE 405 – "every order, every cash or margin account' – be retained.

Potential Rule Proposal Regarding All Investment Recommendations

The SACC encourages FINRA to propose a rule to extend the suitability obligations of firms/ associated persons when they recommend any investment products, including non-securities, when recommended in connection with the firm's business. As FINRA notes, the business of members is today often seamless in nature with other investment related entities. One area ripe for such a rule might be the member's recommendation of insurance products through an affiliate or parent company. When making recommendations for such a vital piece of a customer's financial picture, a member/broker certainly should be required to a diligent suitability assessment. This approach is consistent the 'shingle theory' which essentially requires one who holds himself out as able to provide the financial service, be also accountable for the service. The SACC would welcome more direction from FINRA on the details of its potential rule proposal. We encourage FINRA to explore this very timely issue.

Conclusion

The SACC is greatly in favor of most of FINRA's Proposed Rules 2111(a) and 2090. As indicated, we believe that there is room for improvement. We urge FINRA to consider and incorporate herein our recommendations, and to file the revised rule proposals with the SEC. Please do not hesitate to contact us if you have questions regarding these comments.

Thank your for your consideration and attention.

Birgitta K. Siegel,Esq.
Securities Arbitration & Consumer Law Clinic
Syracuse University-College of Law
306 McNaughton Hall
P.O. Box 6543
Syracuse, N.Y. 13217
315-443-4582

Ariel Lin
Student Attorney, J.D. Class of 2010
Securities Arbitration & Consumer Law Clinic

From: Barbara Silvey [barbsilvey@gmail.com]
Sent: Wednesday, June 24, 2009 9:25 AM
To: Comments, Public
Subject: FINRA Reg 09-25

To Whom It May Concern,

I oppose expanding FINRA authority to regulate non-securities products. These products have been, and should continue to be, regulated at the state level.

Barbara Silvey
Uniontown, OH 44685

From: Biggator SIMS [biggatorsims@hotmail.com]
Sent: Thursday, June 25, 2009 5:17 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25"

These are not securities and therefore should not be regulated by FINRA!

Ben C. Sims
Registered Representative
Sims & Associates
104 NW 7th Avenue
Okeechobee, FL 34972
Office (863) 467-8118
Cell (863) 634-4926
Fax (863) 763-1376

From: Andy Small [asmall@scottrade.com]
Sent: Friday, June 26, 2009 6 06 PM
To: Comments, Public
Subject: Comments - FINRA Notice 09-25

June 26, 2009

Marcia E. Asquith

Office of the Corporate Secretary

FINRA

1735 K Street, NW

Washington, DC 20006-1506

Re: Notice 09-25 - Proposed FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

Scottrade, Inc. ("Scottrade") appreciates the opportunity to comment on proposed FINRA Rules 2111 and 2090 dealing with amendments to the NASD suitability rule and the adoption of new know your customer ("KYC") obligations for firms that were not previously New York Stock Exchange members.

Scottrade provides discount brokerage services to over two million active customer accounts through multiple online platforms and through over 400 branch offices. Scottrade does not make any recommendations or provide financial advice of any kind to our customers. Scottrade's registered representatives are salaried employees who are not paid directly on transaction-generated commissions and are not assigned specific customer accounts. Discretionary trading is not permitted. Most of Scottrade's business is conducted by a customer's interaction with electronic platforms, in which the customer never deals with any representative.

Scottrade has two primary concerns with the proposed rule changes. First, the proposal to replace the NASD suitability rule with a new FINRA suitability rule without reference to NASD's Policy

Statement regarding online suitability is incomplete. Second, Scottrade opposes adoption of the NYSE's KYC because it creates, in our view, unnecessary and costly record making and keeping obligations for firms that do not make recommendations.

1. Online Suitability Interpretation Should be Codified

NASD published a Policy Statement in Notice to Members 01-23 providing members with guidance concerning their obligations under the NASD general suitability rule in an electronic environment. The guidance has served as an important analytical framework for firms in determining whether online services would be considered recommendations by NASD and now FINRA. Since FINRA's recent notice stated that the new FINRA suitability rule would codify various interpretations regarding its scope, Scottrade believes it is vitally important for the online suitability interpretations to be brought forward as part of a new FINRA suitability rule or specifically referenced as an applicable interpretation to FINRA's new suitability rule going forward.

2. Exempt "Discount Brokers" from the Proposed KYC Rule

Scottrade opposes FINRA's proposal to adopt NYSE KYC rule to apply to firms who do not provide securities recommendations (i.e. "discount brokers") for four main reasons. First, FINRA has not articulated a compelling reason or provided any analysis for why obtaining investment objective and financial information from discount brokerage customers are essential facts. FINRA's apparent rationale for imposing NYSE rules on non-NYSE firms is set forth in a single sentence in Notice 09-25. The sentence says that the proposed KYC "...information may be used to aid the firm in all aspects of the customer/broker relationship, including, among other things, determining whether to approve the account, where to assign the account, whether to extend margin (and the extent thereof) and whether the customer has the financial ability to pay for transactions." This conclusion seems based on supposition rather than any factual basis. Scottrade certainly can understand a new rule to collect and retain information if it is justified by the circumstances like when a firm is making a recommendation. However, Scottrade is unaware, and FINRA has not articulated, any industry-wide problem of a magnitude that would justify treating all discount brokerage accounts like full service brokerage accounts. Furthermore, FINRA should not conclude that firms that have not historically collected KYC information do not have a solid basis to make decisions regarding the customer/broker relationship applicable to our business. To the contrary, Scottrade uses multiple third party sources of information to learn the essential facts about customers needed to conduct our discount brokerage business. These essential facts are used by Scottrade to: a) verify customer identity for AML purposes; b) allow us to make informed credit extension determinations; and c) prevent fraud losses. Obtaining investment objectives and financial information from customers does not aid us, and frankly adds no value, in making these determinations.

Second, Scottrade believes that FINRA should harmonize any new record-making and record-keeping rules with the SEC's books and records rules unless there is a compelling reason for not doing so. In this case, FINRA should take a consistent approach with that of the SEC and exempt discount brokers from its proposed KYC rule. In 2001, the SEC amended its books and records rule and adopted the "account record" rule. As initially proposed by the SEC, the account record rule like

the proposed KYC rule would have required all broker-dealers to obtain investment objective and financial information such as annual income and net worth from customers. However, in adopting the final rule in 2001, the SEC exempted firms that did not make recommendations from the requirements of the rule when it realized that requiring firms to gather and retain information used in making suitability determinations when the firm had no obligation to make a suitability determination was an unnecessary burden. As such, we urge FINRA to come to the same conclusion as the SEC and exempt online brokers from the proposed KYC rule.

Third, Scottrade believes that the costs of requiring online brokers to gather new information far outweigh any perceived benefit. As stated above, we do not believe that there are any significant benefits of having the proposed KYC rule apply to discount brokers. Even if FINRA does perceive benefit to having discount brokers gather the proposed KYC information, it should analyze these perceived benefits in relation to the costs of implementing the changes for discount firms. In our case, the proposed KYC rule would force technology and procedural changes in numerous parts of our business. For example, it would force changes in our online account application. Paper applications would also have to be changed. We would need to modify our information collection technology and our account opening processing engines. Our electronic workflow process would need to be modified. We would also need to modify our databases and other electronic storage systems to accommodate the additional information that the proposed rule would have us retain. These changes provide no benefit to customers who open accounts with us. Our customers do not want, and we do not provide, advice or recommendations. The proposal could lead to discount brokers to pass these unnecessary costs on to customers, which inhibits customer choice in the brokerage business.

Fourth and lastly, requesting all customers to furnish investment objectives and financial information is likely to mislead customers into believing that broker-dealers are monitoring their self-directed trades to ensure consistency with account information. In the discount brokerage model, it is unlikely for firms to monitor transactions for this reason. Some firms offer both advice and discount brokerage services. We believe it is important for the public to be able to distinguish discount brokers from firms offering advice. A key to clarity on this issue is permitting discount brokers to use a new account applications that are not required to include traditional full service broker questions like investment objective and financial information. Scottrade urges FINRA to keep the distinctions between full service and discount brokers in new account application requirements separate and distinct.

In summary, Scottrade believes that it is necessary for regulatory clarity for FINRA to codify or otherwise incorporate the NASD Online Suitability guidance into the FINRA suitability rule. On the proposed KYC rule, Scottrade opposes applying the proposed rule to firms that do not by choice make recommendations to customers and requests that these firms be exempt from the proposed rule.

We thank you for your consideration of our comments. If we can be of any assistance, please do not hesitate to contact me.

Sincerely,

Andrew C. Small

General Counsel

Public Investors Arbitration Bar Association

June 26, 2009

Ms. Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Office of the Corporate Secretary-Admin.

JUN 26 2009

FINRA
Notice to Members

RE: FINRA Regulatory Notice 09-25
Suitability and Know Your Customer Rules

Dear Ms. Asquith:

On behalf of the Public Investors Arbitration Bar Association (PIABA), I am pleased to comment on the above-referenced proposed changes to the Suitability Rule and the Know Your Customer Rule, FINRA Rules 2111 and 2090. PIABA generally supports this rule proposal, which arose out of the need to harmonize NASD and NYSE rules pertaining to recommendations by registered representatives to public customers. However, PIABA also believes some revisions are necessary to ensure the protection of public customers.

PIABA is a nationwide bar association comprised of attorneys who represent investors in securities arbitrations, primarily before FINRA Dispute Resolution. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities arbitration forums. Our members and their clients have a strong interest in the implementation and oversight of FINRA rules, especially those which are designed to provide critical protections to public investors. The Suitability and Know Your Customer rules exemplify the bedrock obligation of broker-dealers and their representatives to provide prudent investment advice, tailored to the needs and objectives of their clients.

PIABA Supports Proposed FINRA Rule 2111(a) Governing Suitability and the Supplementary Material Thereunder

We note first that the NASD Suitability Rule, which is current NASD Rule 2310, was specifically limited to recommendations of a "purchase, sale or exchange of any security." We applaud the new language in proposed Rule 2111(a), which requires a reasonable basis for any "recommended transaction or investment strategy." We view this language as a long-overdue clarification of the suitability obligation, which in our view recognizes the

realities of today's financial services industry. FINRA member firms and their representatives no longer limit themselves to recommending purchases and sales of particular securities; presently, member firms and associated persons have and continue to recommend overall investment strategies. Moreover, we note that in its training for licensure, the New York Stock Exchange teaches its brokers that they have a duty to monitor a customer's portfolio and make recommendations consistent with changes in economic conditions and financial conditions as well as the customer's needs and objectives.[1] It is wholly appropriate that brokers have a reasonable basis for the overall strategy and management of a customer account, as well as for recommendations of specific securities.

We also support and appreciate the proposed rule's list of nine specific factors to be considered by a member firm in making a recommendation. This is a significant improvement over the short list of factors contained in current NASD Rule 2310(b). The rule as proposed will provide brokers with a clear road map for compiling and analyzing customer-specific information in the course of deciding what recommendations to make to the customer. It is also helpful that the rule retains the requirement that representatives take into account any other information which the member firm or representative considers to be reasonable.

We support the retention of the "fair dealing" language in Section .01 of the Supplementary Material. It is important for those persons subject to these rules to understand that the requirement of fair dealing underlies all of the specific rules, and provides the philosophical underpinning of the suitability rule in particular.

We also support the three components of suitability identified in Supplementary Material 2111.02. In particular, it is appropriate to emphasize that the suitability obligation must encompass having a reasonable basis to recommend the security in question. We support the rule clarifying that members have a due diligence requirement, and we agree that the level of required due diligence will be dependent upon the facts and circumstances of each case. The customer-specific obligation is properly identified and defined. Finally, though we have proposals below for revisions, we support the identification of "quantitative suitability" as a category of unsuitable recommendations. We believe that the term is an improvement over words previously used, such as "churning."

Finally, we support the addition of Supplementary Material 2111.03, which places the obligation on the broker to consider whether the customer

[1] Content Outline for the General Securities Registered Representative Examination (Test Series 7), New York Stock Exchange 1995.

can afford the transaction or strategy which is being recommended. This language is consistent with case law and with several published SEC decisions in disciplinary proceedings. We also agree with the point that the broker should consider whether an investment or strategy continues to be affordable. The rule change confirms the broker's duty to continue to assess the customer's financial situation.

Notwithstanding PIABA's overall support of the rule proposal, we believe that there is ample room for improvement. The next section of this letter sets forth our proposals for Rule 2111(a) and the supplementary material thereunder.

Proposed Revisions to Rule 2111 and Supplementary Material

Definition of "Recommendation"

The proposed rule noticeably lacks any definition of what constitutes a "recommendation." Member firms and their registered representatives often argue that a "recommendation" applies only to recommended purchases of securities, but not to recommendations given by brokers to hold or sell. While we believe that the insertion of the term "investment strategy" into the suitability rule goes a long way toward ameliorating this concern, we believe it would be useful to regulators and those they regulate if the rules clarified that a recommendation to "hold" is subject to the suitability rules.

As part of the Consolidated FINRA Rulebook, PIABA suggests that Proposed Rule 2111, or the supplementary material that ultimately accompanies the Rule, is the logical place to define and clarify what constitutes a "recommendation" to a customer. Neither current NASD Rule 2310 nor NYSE Rule 405, which are the subject of the current consolidation effort, clearly establishes what constitutes a "recommendation." There has been much debate over this very issue. NASD Notice to Members 96-60, issued thirteen years ago, generally states that "a broad range of circumstances may cause a transaction to be considered recommended...." A very useful definition of this important concept can be found at Incorporated NYSE Rule 472.10 /09 "Communications with the Public – Definitions", which defines a recommendation as "...any advice, suggestion or other statement, written or oral, that is intended, or can reasonably be expected, to influence a customer to purchase, sell ***or hold*** a security" (emphasis added).

From a public customer's viewpoint, a recommendation to hold a security can have the same economic effect as a recommendation to buy or sell. By including this long-standing definition in the proposed rule, this important concept can be spelled out and provided to member firms and

public investors alike so that everyone can understand the common meaning of what constitutes a "recommendation" and ensure that the term is not defined as relating only to a recommendation to buy or sell. When a broker recommends that a customer hold a security, such recommendation must also be suitable for the customer based on all relevant factors. A broker should ascertain whether the investment remains suitable if he or she is going to recommend that a customer hold a security, as the customer's financial situation, or other relevant factors, may have changed dramatically since the time the security was purchased. Many firms argue that the definition of a recommendation contained in NYSE Rule 472 has no bearing on the suitability of their recommendations to customers, but rather relates strictly to analyst communications with the public. Now is a perfect opportunity for FINRA to clarify that the suitability rule applies to recommendations to buy, sell, or hold a security.

Examples of Unsuitable Recommendations in Current IM-2310-2

We are also concerned with the absence of language in the proposed rule mirroring current IM-2310-2 ("Fair Dealing With Customers"). IM-2310-2 contains several real-life examples of what constitutes unsuitable or fraudulent conduct. PIABA recommends that the proposed rules be expanded to include those bright-line examples, or that supplementary materials be added to the current rule to retain these provisions. In many respects, proposed Supplementary Material 2111.01-.03 overlaps current IM-2310-2 in terms of content. However, PIABA believes that the wholesale consolidation (and in some instances, deletion altogether) of the material in IM-2310-2 would be a disservice to public investors. Under the current proposal, for example, there is no specific guidance as to unauthorized transactions or recommendations to buy low-priced securities. These omissions should be rectified.

Similarly, we would like to see included in the new rule the qualification contained in IM-2310-2, that practices enumerated in the proposed rule are not all-inclusive. Any rule governing suitability should be viewed and interpreted broadly, and not in a limiting fashion.

Quantitative Suitability

PIABA is concerned with the concept that quantitative suitability applies only when a broker has actual or *de facto* control over the account. Any recommendation that is unsuitable is unsuitable, whether a broker had control over the account or not. Furthermore, the concept of "*de facto* control" requires a legal analysis, which may vary dramatically from state to state. The vast majority of brokers and their supervisors cannot be expected to

undertake this analysis on a day-to-day and account-by-account basis. We recommend that this portion of the rule be deleted.

Moreover, FINRA and the SEC have already opined that the control element is not always outcome determinative in a quantitative suitability setting, and that the suitability rule can be violated even if the "control" element is not met. As the SEC has recognized, "excessive trading represents an unsuitable frequency of trading and violates NASD suitability standards." *Paul C. Kettler*, 51 S.E.C. 30, 32 (1992); *see also Harry Gliksman*, Exchange Act Rel. No. 42255, at 4 (Dec. 20, 1999); *Michael H. Hume*, Exchange Act Rel. No. 35608, at 4 n.5 (April 17, 1995). Even in cases where a customer affirmatively seeks to engage in highly speculative or otherwise aggressive trading, a representative is under a duty to refrain from making recommendations that are incompatible with the customer's financial profile. *See Rafael Pinchas*, Exchange Act Rel. No. 41816, at 11 (Sept. 1, 1999) (customer's desire to "double her money" does not relieve registered representative of duty to recommend only suitable investments); *see also John M. Reynolds*, 50 S.E.C. 805, 809 (1992) (regardless of whether the customers wanted to engage in aggressive and speculative trading, the representative was obligated to abstain from making recommendations that were inconsistent with their financial situation).

Thus, if a customer wishes to trade beyond his means or in such a way that makes it almost impossible to cover the costs of the account, the customer should be notified of that fact. Under the proposed rule, the broker would be permitted to stand on the sidelines and turn a blind eye to the trading activity under the guise that she was not controlling the account. Such a concept is at direct odds with FINRA's stated commitment to protecting investors.

PIABA Favors Greater Documentation of the Suitability Exemptions for Institutional Investors

PIABA is concerned with the portion of the proposed revisions that would seek to eliminate and/or substantially reduce the express suitability obligations that are applicable to institutional investors under IM-2310-3.

Under the proposed revision that has been presented for consideration in Rule 2111(b), an institutional investor would potentially lose all of the suitability protections that presently exist if certain "clear exemptions" were applicable, including, but not limited to, if the institutional investor were to "affirmatively indicate" that it was "willing to forego the protection of the customer-specific obligation of the suitability rule."

There is no discussion, however, as to whether this "affirmative" indication would need to be evidenced in a written document that the institutional customer would be required to sign or as to whether any specific disclosures of the material terms and conditions that are associated with the waiver of the suitability protection rule would be required to be evidenced in a written document that the member or associated person would be required to provide to the institutional customer. This kind of "waiver," if appropriate at all, simply cannot be accomplished by boilerplate contractual terms.

Accordingly, we would recommend that proposed Rule 2111(b) be amended so as to require that: (a) the "affirmative" indication to be made by an institutional customer would be evidenced in a written document that the institutional customer would sign; and (b) that, in connection with the same, the disclosures of the material terms and conditions that are associated with the waiver of the suitability rule's protections would be evidenced in a written document that the member or associated person would provide to the institutional customer.

PIABA Supports Retention of the "Know Your Customer" Rule

We are gratified to see that FINRA intends to retain the iconic "Know Your Customer" Rule, formerly set forth in NYSE Rule 405. We have always felt that the Know Your Customer Rule goes beyond the FINRA Suitability Rule, so we are pleased to see that the crux of the rule appears in proposed Rule 2090. While we have some important suggestions for this Rule, we wish to state our support for the Rule's inclusion in the consolidated handbook.

One of the key components of this Rule is that it applies without regard to the need for a "recommendation." In the Regulatory Notice, FINRA recognized that this is an obligation which arises at the outset of the parties' relationship, without regard to whether a recommendation has occurred.

We also note with approval that a member firm is not only required to "know" the essential facts about a customer, but is required to "retain" that information. We have some concern that there is no requirement of written documentation or substantiation in the Rule; however, we trust that this issue will be covered in other rule changes or by reference to the existing SEC Rules regarding document retention.

Proposed Revisions to Rule 2090

Noticeably absent in proposed Rule 2090 is language from current NYSE Rule 405 that requires a broker to use due diligence to learn the essential facts relative "every order, every cash or margin account," in

addition to the information relating to the customer. Rather, the proposed Rule would limit the member's obligation to learning about the customer. This would appear to shrink the due diligence obligations of the member firm to a marked degree. We are troubled by the omission of this language, and we hope FINRA will consider reinserting the language from the original Rule 405.

We are especially concerned about the omission of an important word in transforming NYSE Rule 405 into FINRA Rule 2090. Rule 405 requires firms to know essential facts relating to every "order." Owing to the use of the word "order" the NYSE Rule recognizes the obligation of a firm to not only "Know Your Customer," but to "Know Your Security." There should not be room for anyone to argue that the latter duty has been diminished by the rule change, particularly at a time when the complexity of investment products challenges even the most "sophisticated" customers.

We also note that the current version of NYSE Rule 405 requires a member firm to learn the essential facts relative to "every person holding a power of attorney over any account" carried by the firm. In short, the current rule requires the firm to "know the customer's agent" as well as to know the customer. The new Rule again curtails the firm's due diligence obligations, by limiting the firm's obligation to learn the essential facts about *the authority* of any person acting on behalf of the customer. We would be sorry to see the firm's due diligence obligations lessened in this manner. We hope FINRA will consider reinstating the member firm's obligation to "know the agent" as well as the customer.

Finally, proposed Rule 2090 is unclear about exactly who has the due diligence obligations. Former Rule 405 makes it clear that the member firm is required to exercise these due diligence obligations through an officer or compliance official. We are very concerned that firms will use the proposed Rule to take the position that the broker's attempt to learn the essential facts about a customer is enough. This is a serious contraction of the firm's management and supervisorial obligations, and one which we doubt FINRA intends. Therefore, we suggest that the rule be revised, or that supplementary material be added, to clarify that the firm can only carry out these due diligence requirements through an officer or compliance professional.

Conclusion

We are greatly encouraged by FINRA's proposed rules, although we believe that there is significant room for improvement. We urge FINRA to file these rule proposals with the SEC, after adopting the recommendations set

forth in this letter. FINRA's mission of providing investor protection will best be served by the proposed revisions.

Please do not hesitate to contact me should you desire further discussion of the above. Thank you for your courtesy.

Respectfully,

PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

Brian N. Smiley
President

Public Investors Arbitration Bar Association
2415 A Wilcox Drive Norman, OK 73069 Phone: (405) 360-8776 Fax: (405) 360-2063
Toll Free: (888) 621-7484 Website: www.PIABA.org Email: piaba@piaba.org

From: Brian D Smith [briandsmith@vistapointewealthsolutions.com]
Sent: Thursday, June 25, 2009 2:06 PM
To: Comments, Public

Dear Ms. Asquith,

I have been in the insurance business for 16 years with a specialty in life insurance. While I understand the need for regulation and oversight in light of recent events in the financial services industry, I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Having focused on insurance products for the past few years, I am acutely aware that insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

Please accept this recommendation when considering any changes to FINRA's expansion of suitability rules – it would only hinder the flow of business and make it more difficult for us to help our clients.

Respectfully,

Brian

Brian D Smith, JD, CFP

VISTA POINTE

244 Blvd of the Allies
Pittsburgh, PA 15222
(412) 325-8480 phone
(412) 391-1738 fax
www.vistapointewealthsolutions.com

From: Dixie H Smith [mailto:dixiesmith@ft.newyorklife.com]
Sent: Tuesday, June 23, 2009 12:03 PM
To: Comments, Public
Subject: Working in Coordination --- Regulatory Notice 09-25

Please reconsider your recent proposal of changing the FINRA rules concerning suitability requirements. This piecemeal of regulations by the Administration, SEC, FINRA and Capitol Hill should stop and coordination of suitability rules for registered representatives with securities and non-securities be created.

I don't understand your regulating non security components; but, at least do it in conjunction after the current debates are completed. Please work in conjunction rather than finding yourself having to amend your work after the policy makers, who do have authority over non security suitability requirements announce their regulations.

Dixie Hughes Smith, ChFC, MSFS, CLU, CASL, AEP
Financial Adviser
Eagle Strategies LLC., a Registered Investment Adviser
428 W. Pine Street, Lodi, CA 95240
CA Insurance License #0376423
Registered Representative offering securities through NYLIFE Securities LLC(member FINRA/SIPC)
General Office:
3255 W. March Lane, Suite 300
Stockton, CA 95219
209-955-2400

From: ken.smith1@mchsi.com
Sent: Monday, June 29, 2009 10:01 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Ken Smith
15075 Sheridan Avenue
Clive, IA 50325-4521

June 29, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

Are you guys nuts, or what? I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Finra has done a mediocre job at best, of what regulatory responsibilities they have had, why would we give them more. Look only at the last three years at their oversite abilities. It is like Washington is saying, "Finra has done so poorly, let's give them more authority and money so they can do so on a larger scale."

Just once I would like to see those of you in Washington use some common sense and do the right thing instead of multiplying past mistakes and having Americans pay for it.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Ken Smith
515-987-2576

-----Original Message-----
From: Smith, Mark [mailto:mark.smith@wslife.com]
Sent: Thursday, June 25, 2009 2:40 PM
To: Comments, Public
Subject: New FINRA governance

I have been in both the banking and the life insurance industry for a combined 13 years, most currently with Western-Southern Financial Group, and am also a registered rep. It is the intention of this letter to let you know that I strongly object to expanding FINRA's suitability obligations to products that do not involve securities.

Our products are regulated at the state level, through the efforts of state insurance departments and other state regulators. They have done a great job over the years in protecting consumers from being mislead about the products that are offered, and the application of FINRA rules would only add to the confusion of monitoring and enforcing those rules already in place. I believe that those agents who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. FINRA's authority should NOT be expanded to include non-securities products and services.

My personal view is that with further regulation, some of the non-securities products will disappear. The choice of a participating policy is the clients choice, and to have to give more disclosures than already are required just confuses the client postponing a decision. As we see in banks across the country, the charitable cans for donation to help people without proper insurance is growing, and postponing a proper decision will only add to the numbers of families hurt by the death, disability, or catastrophic health of a family member.

Due to the fact that much debate is currently going on concerning the standard of care which broker/dealers and investment advisors owe to their clients, it would be inappropriate for FINRA to expand or revise current suitability requirements until these discussions are complete.
Should a client wish to take steps toward the investment world, a registered representative with the valid licenses from the proper authorities discusses these options.

Again, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thanks for considering my views on this issue, and feel free to contact me regarding this matter.

Mark Smith
Registered Representative

Western & Southern Financial Group
o: (740) 366-1316 x110
c: (740) 975-9374

From: linda.boerman@nmfn.com
Sent: Monday, June 29, 2009 3:52 PM
To: Comments, Public
Cc: gsanders@naifa.org
Subject: Regulatory Notice 09-25

On behalf of Robert O. Smith....

This e-mail is in response to your Regulatory Notice 09-25 in which you are intending to expand suitability obligations "regardless of whether the recommendations involve securities". I am an attorney, an insurance professional and a registered representative and I am stunned that you are proposing such a requirement. I can guarantee you will have thousands of irate letters directed not only to you but to Congress if you proceed with what will be perceived as a power grab. This is not only ill thought out, it is crazy! Is FINRA going to determine suitability standards as to whether someone should buy or lease a house or a car? How about buying term insurance, cash value insurance, universal life insurance or traditional life insurance? Should a client have a $1 million, $2 million or $5 million umbrella policy? Should a client not belong to a private country club?

I hope you were serious when you asked for comments because you will get it spades if Congress is forced into the picture. Please do not do something as stupid as this.

Sincerely,

Robert O. Smith, J.D., CLU, ChFC, LIC

Linda A. Boerman, CLTC

Associate Financial Representative with

Robert O. Smith, J.D. CLU, ChFC, LIC

Estate and Business Planning Specialist

85 Campau NW

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Grand Rapids, MI 49503

Phone 616-836-5729

FAX 616-774-4483

E-mail linda.boerman@nmfn.com

From: David Sobel [mailto:DSobel@AbelNoser.com]
Sent: Monday, June 22, 2009 8:57 AM
To: Comments, Public
Subject: 09-25

In proposed rule change outlined in 09-25, there is a specific carve out for institutional clients in the suitability section, but no such explanation in the know your customer section. Is there any specific guidance for this?

David M. Sobel, Esq.
EVP / CCO
Abel/Noser Corp.
One Battery Park Plz
New York, NY 10004
646-432-4170 (v)
212-363-7571 (fax)
dsobel@abelnoser.com

From: David Sobel [mailto:DSobel@AbelNoser.com]
Sent: Friday, June 26, 2009 9:31 AM
To: Comments, Public
Subject: 09-25

The designation of Institutional Customer is one that includes being a professional, one who is paid to do his or her job. And with that pay comes the inference that they know what they are doing. To require them to specifically opt-out of the protection of the customer specific suitability rules is counter-productive. A professional being asked to opt-out of a protection would be breaching his or her fiduciary duty to their firms. This rule is a set-up for arbitrations, and places the BD in the role of guarantor. The existing rule has been working using the reasonable basis analysis. I also believe that increasing the AUM from $10 to 50 million excludes many highly qualified advisors from the Institutional definition. It should remain at $10 million.

David M. Sobel, Esq.
EVP / CCO
Abel/Noser Corp.
One Battery Park Plz
New York, NY 10004
646-432-4170 (v)
212-363-7571 (fax)
dsobel@abelnoser.com

From: Spangler, Matthew [mailto:mspangler@jhnetwork.com]
Sent: Tuesday, June 23, 2009 3:13 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I am a licensed insurance agent and registered representative. From what I've been reading about the new proposed Regulatory notice 09-25 it appears you are going outside your jurisdiction. I strongly oppose this proposal. Insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements.

Bottom I believe in protecting the consumer and setting up regulations that help do that. People need to our help for proper insurance and investment planning. I believe there can come a point where the regulations hinder rather than help and I believe we are close to that point. Please do not allow this regulatory notice to be implemented.

Matthew Spangler
Registered Representative

John Hancock Financial Network
700 Cedar Lake Blvd.
Oklahoma City, OK 73114
ph. 405-475-7878
fax 405-478-1205

From: Thomas H. Staebler [mailto:tom@staeblergroup.com]
Sent: Thursday, June 25, 2009 4:16 PM
To: Comments, Public
Subject: Expansion

Please do NOT expand FINRA's scope beyond registered securities. There is plenty for FINRA to regulate within the current scope, without diluting the efforts.

Thank you.

Thomas H. Staebler, CLU*
The STAEBLER Group
575 Copeland Mill Rd. Suite 2D
Westerville, Ohio 43081
(614)794-3701 Fax (614)794-1257
tom@staeblergroup.com
*Registered Representative offering securities through
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*Financial Adviser offering Investment Advisory services through Eagle Strategies LLC, a Registered Investment Adviser
The STAEBLER Group is not owned or operated by NYLIFE Securities LLC or its affiliates
Ohio Insurance Lic.#24303

From: lee.staniar@us.ing.com [mailto:lee.staniar@us.ing.com]
Sent: Tuesday, June 23, 2009 10:16 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Lee Staniar
3334 Harness Creek Rd
Annapolis, MD 21403-1618

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I strongly oppose the expansion of suitability requirements to products that are not securities. Finra has neither the authority nor the expertise to fulfill this function. Further, it would be a duplication of the job already being done by state insurance departments. I have over 40 years experience providing needs based solutions to my clients financial situations. As a CLU and ChFC I support agressive enforcement of current regulations and appropriate sanctions against those who make unsuitable recommendations, but an unwarranted and unnessary expansion of Finra's authority is not in the publics best interest.

Sincerely,

Lee C Staniar CLU, ChFC
410-991-4801

June 26, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street
NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 09-25

Dear Ms. Asquith,

I have been in the life insurance business for 48 years. My company through my efforts has paid out multi-millions of dollars in death benefits to beneficiaries and millions of dollars in retirement benefits to my policyholders through my career.

Today, it would seem that I spend more time complying with my states comprehensive regulations than the actual sales process.

I strongly oppose expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities.

Sincerely,

Jack Stanton, CLU

JS/sf

NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

July 13, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 2009-25
"Suitability" and "Know Your Customer"

Dear Ms. Asquith:

On behalf of the North American Securities Administrators Association (NASAA)1, I am submitting this comment letter regarding the Financial Industry Regulatory Authority's (FINRA) proposed rule consolidation for NASD Rule 2310 and NYSE 405 that would alter the obligations for suitability and "Know Your Customer" standards for broker dealers. NASAA appreciates the opportunity to express its views on this matter of vital importance to our nation's investors, particularly at this point in history when investor protection should be enhanced and retail investor confidence must be restored.

On March 26, 2009, Richard Ketchum, the Chairman and CEO of FINRA testified before the Committee on Banking, Housing, and Urban Affairs within the United States Senate. In part, he stated the following:

> One of the primary issues raised about investor protection differences between the broker-dealer and investment adviser channels is the difference between the fiduciary standard for investment advisers and the rule requirements, including suitability, for broker-dealers. As the process moves forward, this is the kind of issue that should and will be on the table as we all look at how best to reform our regulatory system and strengthen investor protections. In keeping with our view there should be increased consistency in investor protections across financial services, we believe it makes sense to look at the protections provided in various channels and **choose the best** of us.

1 NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

NASAA encourages FINRA to do just that – to choose the best standards – for all types of investors who hold, invest, and receive advice from investment professionals in a broker-dealer context.2 Thus, NASAA's comments to the proposed changes to "Know Your Customer" and suitability standards are aimed at eliminating any consideration for weakening current suitability standards through the consolidation of a FINRA rulebook. We encourage FINRA to strengthen the standards for suitability during its rulebook consolidation.

Suitability

NASAA strongly encourages FINRA not to diminish any investor protections or specificity requirements that currently exist in today's suitability rules through the process of rulebook consolidation.3

To that end, NASAA notes the following:

The Interpretive Materials (IMs) that are included within the current FINRA manual for suitability add specificity to the rule language. Registered persons, compliance personnel, investors, and registered principals read and regularly refer to the FINRA manual. The specific examples and discussions contained within the IMs help those in the industry and those investing in securities understand – in clear, every day ways - how the suitability rule applies to specific transactions and situations.

For example, IM-23102(b) currently consists of five subsections which describe specific conduct deemed to be inconsistent with members' additional duties imposed on members recommending new financial products and derivative products. More, not less specific guidance in these areas is required given the deleterious securities markets. Eliminating access to common interpretation of the rule seems counterintuitive, and reducing the content of 2310-2 to the simple notion of "fair dealing" with customers in inappropriate.

NASAA applauds FINRA's notion that it is time to codify existing IMs. We encourage FINRA to do so and to mirror the specifics contained within the IMs and to codify that language. NASAA expresses hesitation for the approach of not codifying such language at this juncture.

Suitability with three prongs

The substantive content of Regulatory Notice 09-25 describes in proposed Rule 2111 Supplementary Material .02, the codification of suitability as a three pronged approach to suitability principles. As written, the interpretation appears to create several new standards: reasonable-basis suitability, customer-specific suitability, and quantitative suitability. The description which follows of what the first prong means is not particularly clear. For example, the material states that reasonable-basis suitability requires the member have a "reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors." Does the fact that a recommendation may be suitable for "at least some investors"

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2 NASAA has pledged its support for consideration of a **strong** fiduciary duty standard being implemented across the investment industry. While there is a call for a fiduciary duty – NASAA also supports strong, clear, and best in class suitability standards.

3 It is possible that a fiduciary standard may be incorporated into broker-dealer rules in the future. However, in the interim, and even if a potent fiduciary standard is ultimately adopted (along the lines of ERISA fiduciary standards were to be accepted), suitability ought not to be diminished in the process.

now figure into the determination of whether a recommendation is suitable for a particular investor?

The material goes on to state:

> In general, what constitutes adequate due diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy.

Due to its broad and generalized nature, it is hard to say how such a description will assist members of the public. Further, a member's familiarity with a product should be presumed before a recommendation is made; i.e. it should not be part of the question of "adequate due diligence" that a person has familiarized themselves with their recommendation.

NASAA also questions whether the three pronged approach could lead industry defendants to make an argument in the future that suitability standards are strictly limited to the three prongs only – without room for new prongs or measurements to be added in the future of the rule.

Suitability and Institutional Investors

In order to "choose the best" standards for investor protection, NASAA encourages FINRA to carefully examine the carve backs or exemptions from suitability standards that exist today. It is our suggestion that exemptions be narrowed (or at least maintained) rather than broadened in the arena of suitability.

As proposed, Rule 2111(b) appears to provide a "box check" waiver of the customer-specific obligation of the suitability rule for institutions. This hardly seems appropriate given how, for example, securities such as auction rate securities were marketed and sold to both wealthy individuals and institutions. While 2111(b) does incorporate several aspects of the IM 2310-3, the significant material currently set forth in detail under the heading "Considerations Regarding the Scope of Members' Obligations to Institutional Customers," including the bulleted considerations and discussion of various factors should be carried over in its entirety to the new manual. Otherwise, members are left without the benefit of this significant guidance.

Institutional investors – hard hit during the recession and through the auction rate securities dilemma – need the best investor protection standards along side of main street investors.

"Know Your Customer" / Due Diligence

In addition to removal of the IM language of the current rule, NASAA questions the need for removing a specific portion of NYSE Rule 405 in the proposed new rule. The current language reads, in pertinent part:

> Rule 405(1) Use due diligence to learn the essential facts relative to every customer, **every order**, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization.

The proposed language is far less specific. Proposed Rule 2090 states:

> Every member shall use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

Removal of the language from the current rule that states:

> [E]very order ... accepted or carried by such organization ... [.]

could be construed to eliminate the requirement that due diligence is being eliminated on a transactional basis. Moreover, the newly proposed rule also could be construed to mean that the focus of "due diligence" has shifted away from knowing the product and solely focused on "Knowing the Customer." The removal of this language would appear to lower the standards for member firms for compliance with the rule.

While NASAA believes that FINRA may be capturing product due diligence in the term "reasonable basis suitability" in proposed Rule 2090, the wording in 2090 is weaker that the current language of Rule 405. Specifically, 2090 states:

> [F]irms must have a reasonable basis to believe, based on **adequate due diligence**, that a recommendation is suitable at least for some investors.

The direct language of 405 – that "every order" must contain due diligence – rather than be suitable at least for some investors based on adequate due diligence – is more clear and preferable over the new language.

Moreover, NASAA suggests that it would be beneficial to include the language that FINRA provides in Regulatory Notice 09-25, prior to the proposed rule language, in the actual proposed rule. FINRA states within the Regulatory Notice that, "The [Know Your Customer] obligation arises at the beginning of the customer/broker relationship and does not depend on whether a recommendation has been made."

NASAA suggests that this clear language be captured within the actual proposed Rule 2090.

Closing Comments

Finally, NASAA notes that FINRA has sought comment as to whether "suitability obligations [ought to expand] to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involves securities."

In order to be make suitable investment recommendations – NASAA believes that general knowledge of and general comparison to non-securities products is implicit for a registered person to make suitable investment recommendations. A registered securities professional needs to be generally apprised of the financial marketplace as a whole in order to be positioned to make suitable recommendations and to fulfill the current obligations of suitability standards.

Moreover, NASAA also believes that consideration of cost to the customer of a securities product is certainly a part of a suitability analysis for an investment recommendation.

The proposed consolidation of FINRA Rule 2310 and NYSE Rule 405 purports that there are no substantive changes in the standards or obligations imposed upon members in the areas of suitability and knowing the customer. Accordingly, NASAA recommends against eliminating the considerable body or interpretive material for each rule (particularly for Rule 2310). Elimination of the IMs serves no useful purpose and fosters a lack of clarity.

NASAA agrees with the statement made by Chairman Ketchum before Congress in March 2009 – that "**the best**" standards should apply to investor protection. Accordingly, NASAA believes that a **strong** fiduciary duty standard coupled with the **strong** suitability language would enhance investor protection and would help to restore more confidence in today's marketplace. Consideration of fiduciary duty with simultaneous consideration of any weakening to suitability standards would only be a bait and switch for the American public.

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,

/S/

Rex A. Staples
General Counsel
North American Securities Administrators Association

Comment on 09-25 'Suitabiltiy' and 'Know Your Customer'

Introduction

This is an important opportunity for FIRNA to add the words 'Modern Portfolio Theory' and 'Diversification amongst negatively correlated asset classes' and 'Diversification within an asset class' all well known and totally accepted in Finance as tools to reduce risk. These concepts are the bedrock of Finance and are known as Modern Portfolio Theory. They are tested on the Series 7 examination, Chartered Financial Analyst (CFA) exam and the Certified Financial Planner (CFP) exams. Every undergraduate text on investments contains chapters on this concept.

Dr. Harry Markowitz and Dr. William Sharpe were awarded the 1990 Nobel Prize in Economics for developing these concepts. The importance of these tools to measure and allocate risk are beyond dispute. Yet no where does the FIRNA mention these foundational concepts.

The current Rules on 'Suitability' and 'Know Your Customer' are like Swiss cheese since they talk about assessing risks or the broker determining that client understands the risks.....yet NO WHERE is HOW to assess risks articulated by FINRA and no where is the client told that, for example, 90% of his/her return will be a function of allocation between asset classes and that diversification WITHIN asset classes can reduce risk to that of the particular market of the asset class itself.

If we draw an analogy to the medical profession, a doctor must explain the risks of a medical procedure. This is known as 'informed consent'. Although FINRA rules on 'Suitability and "Know Your Customer"' are to serve the equivalent function in the brokerage industry, by totally avoiding mention of Modern a Portfolio Theory, or diversification amongst negatively correlated asset class or diversification with an asset class...these FINRA rule rules as constituted do little to inform he customer and do not serve to require brokers to properly inform their clients of risks and known tools to avoid risks. To continue the analogy...these FIRNA rules serve merely to say that the broker must tell his/her client their is risk in any market trade...without quantifying the risk and giving alternatives to reduce risk. It would as if a Doctor were to discharge the informed content obligations to a patient by merely saying 'surgery, doing nothing, and Pharmaceutical therapy all have risks' without assigning probabilities to those risks and without telling the patient that other alternative mechanisms exist to reduce risks. As the FIRNA rule now stands...it allows gross malpractice, as would the Doctor in the above analogy commit if his/her informed consent were that lax. Further, the current rule allows brokers to fudge on risk tolerance documents and then argue after the fact that the client wanted high risk concentrated equity investments.

Lack of Investor Knowledge

Retail brokerage clients rely heavily upon the advice of their brokers. Seldom does a broker articulate to an investor the fundamental principles of Finance needed to make informed decisions about risk tolerance and realistic investment objectives. Brokers thus encourage the purchase of more risky (high commission) investments by being selective with disclosures to the

investor.[1] A survey by The Securities Industry Association found that Sixty-two percent of all investors surveyed in 1999 stated they that they desired average or below average risk.[2] This number rose to 68 percent in the 2002 survey.[3]

This survey also found that fifty-eight percent of all investors stated that "they rely on professional financial advisers when making equity purchase and sales decisions."[4] In 2002 40% of brokerage clients looked to the broker as the "most" important source of information, down from 43% in 2001 the previous year.[5] "As in the past, a large proportion of investors agree [sic] that the securities industry should be doing more to educate the public about how to make good investments. Eighty-two percent agree in 2003, the same as in 2002. In the three previous years the figures were 84% (2001), 81% (2000), and 78% (1999)".[6] Under the title of "big problems" the study found that "(f)orty-six percent cite insufficient disclosure of risks to investors as a big problem, up from 45% in 2002 and 34% in 2001."[7]

The financial illiteracy of retail investors is illustrated by the John Hancock Financial Services annual survey of investors.

> *consistent with past surveys, most participants have only minimal active involvement with their plans...*
>
> *•More than half spend no more than twenty minutes a month planning for retirement or managing/monitoring investments;*
>
> *•More than half say they don't have time to manage their retirement investments; and*
>
> *•Nearly half say they have little or no investment knowledge and less than 20 percent consider themselves relatively knowledgeable (the numbers have gotten consistently worse with each survey)...*
>
> *•Nearly 45 percent think money market funds contain stocks and less than 10 percent know they contain only short-term investments; and*

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[2] The Investment Company Institute and Securities Industry Association, Equity Ownership in America, *Demographics of Equity Investors* 12 (2002), *at* <http://www.sia.com/research/pdf/equity_owners02.pdf>. It must be remembered that this survey polled investors of all ages, the average being mid-to-late 40s. Younger investors would be seeking higher risk.

[3] *Id.*

[4] *Id.* at 16.

[5] Securities Industry Association, Annual SIA Investor Survey Investor's Attitudes Towards the Securities Industry 2003, 58 (Nov. 2003), *at* <http://sia.com/publications/pdf/Investorsurvey2003.pdf>.

[6] *Id. at 16.*

[7] *Id.* This study also found that fifty-five percent of customers saw "as a big problem the lack of internal controls to prevent irresponsible or wrongful actions, compared to 54% in 2002 39% in 2001 and 33% in 2000."*id.* at 15. In addition, "(s)ixty-six percent cite as a big problem the industry's reluctance to punish wrongdoers, compared to 68% in 2002 and 41% in 2001."*id.*

- *Less than 25 percent know the best time to invest in bonds is prior to a decrease in interest rates.*[8]

Further, this survey found that "40 percent of respondents say they don't know what to expect for average annual returns for stocks, bonds, money market and stable value investments for the next five and 20 years. Of the 60 percent who believe they do know, their expectations remain overly optimistic."[9]

An AARP survey found, among investors over 45 years of age, that 48% did not understand that diversification of assets reduces risk. Forty-three percent believed that Mutual Funds are insured by the FDIC and "only (41%) consumers correctly report that a 'no-load' mutual fund involves no sales charge but does have maintenance fees the consumer must pay."[10] These results are echoed in a recent Merrill Lynch survey.[11]

The Federal Reserve has become increasingly concerned about the financial illiteracy of investors, as the following quote illustrates.

> As history has shown, the rate of change and the pace of innovation will only continue to increase within consumer retail markets. This is true of retail financial markets as well. The net result of these changes is that an ever-increasing number of consumers will be able to access an ever-increasing number of financial products. That scenario suggests both increasing benefit and increasing risk for consumers of financial products. When they are appropriately evaluated and used financial products allow an increasing number of people to achieve financial goals previously considered out of reach. In contrast, inappropriate or careless use of financial products can put a consumer in a deep financial hole from which it can be both difficult and time consuming to recover.[12]

The U.S. Securities and Exchange Commission (SEC) has similar concerns. Its "primary mission...is to protect investors and maintain the integrity of the securities markets. As more and more first-time investors turn to the markets to help secure their futures, pay for homes,

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[8] Press Release, Wayne Gates, General Director, Market Research and Development, John Hancock Financial Services Survey: For Most Americans, Early Retirement Dreams Evaporating (May 24, 2004) *at* <http://www.johnhancock.com/company/newsroom/most_recent/john_hancock_401k_survey_early_retirement_dreams_evaporating_05_24_04.html>.

[9] *Id.*

[10] Sislena Grocer Ledbetter, *2003 Consumer Experience Survey: Insights on consumer credit behavior, fraud, and financial planning,* AARP Knowledge Management, (October 2003), *at* <http://research.aarp.org/consume/cons_exp_1.html>.

[11] Press Release, Merrill Lynch, Employer Plan Management for the Merrill Lynch Retirement Group, Merrill Lynch Announces Results of "retirement Preparedness Survey" (Aug. 12, 2003) ("Hayes noted a two-fold problem that needs to be solved — a lack of basic investment knowledge and a lack of financial advice and planning. 'For the second year in a row, we were alarmed to discover that over half of the Americans surveyed believe that 401(k) accounts are guaranteed by law. No such guarantee exists,' she said."), *at* <http://www.merrilllynch.com/about/press_release/08122003-1_ml_announces_pr.htm>; *See also* 1999 N.Y. Att'y Gen. Elliott Spitzer, *From Wall Street to Web Street: A Report of the Problems and Promise of the Online Brokerage Industry* (1999), *at* <http://www.oag.state.ny.us/investors/1999_online_brokers/full.pdf> *(containing a survey of financial literacy among online investors).*

[12] Governor Mark W. Olson, Increased Availability of Financial Products and the Need for Improved Financial Literacy, At the America's Community Bankers 2003 National Compliance and Attorney's Conference and Marketplace, (Sept. 2003), *at* <http://www.federalreserve.gov/boarddocs/speeches/2003/20030922/default.htm>.

and send children to college, these goals are more compelling than ever."[13]

Thus it is clear that, in the majority of cases, retail investors will openly admit to being financial illiterates.[14] These financial illiterates look to their broker for guidance. Alone investors do not posses the requisite tools with which to make an informed decision as to their risk tolerance and realistic investment objectives. Thus the salient question is, has the broker and brokerage firm sufficiently instructed the retail investor on the realities of Finance so as to make an informed decision on a course of risk tolerance and realistic investing objectives?

Active Management: It is well known in Finance that active management of a portfolio underperforms the market indexes, on a risk adjusted basis, the vast majority of the time.[15] To be 95% sure that skill and not random events caused a portfolio manager to beat the market index, a portfolio manager would have to beat the market index by 1% for 308 years or for a lifetime by 12%.[16] Statistically, the 5 year investment returns of financial newsletters explained only 6% of the future return.[17]

Economic forecasts are equally flawed. Every year the Wall Street Journal publishes a piece that catalogues these dismal Wall Street predictions. "'You really can't say enough bad things about how bad the consensus has been in forecasting interest rates,'" says Stephen K. McNees, an economist at the Federal Reserve Bank of Boston who also analyzed data from the Journal's surveys. 'As an investor, you clearly would have done much better flipping a coin or assuming that rates would remain unchanged."[18] Economic forecasts are touted since 50% of the variation of a company's income is explained by the variations in the aggregate income of

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[13] *The Investor's Advocate: How the SEC Protects Investors and Maintains Market Integrity* (Dec. 1999), *at* <http://www.sec.gov/about/whatwedo.shtml>.

[14] Dr. John Kenneth Galbraith's famous phrase, frequently quoted by Wall Street professionals, sounds a similar clarion. "We have two classes of forecasters: Those who don't know -- and those who don't know they don't know." Tom Herman, *Your money matters: Weekend report: How to profit from economists' forecasts,* Wall St. J., Jan. 22, 1993.

[15] E.g. Arnold Wood, *Fatal Attraction for Money Managers,* Financial Analysts Journal, (May-June 1989) (Examines why professional money managers are "so consistently poor at our profession"). The majority of the money managed in the financial markets is institutional money. The 'smart' money does not trade as aggressively or actively as most individual brokers. Charles Keenan, Institutional Investor International Edition, Investing: Portfolio Strategy, *Adding a bit of zest: enhanced indexing attempts to blend the best traits of passive and active investment styles. It's proved to be a popular combination* (Apr. 2003). Similarly, the most actively traded group of institutional investors, and arguable the more skilled Hedge Fund managers, faired poorly. Greg Jensen & Jason Rotenberg, Bridgewater Associates, Inc., *Bridgewater Daily Observations* ("When we strip many hedge fund "strategies" from the beta that underlies them, we find that quite often, they are not wearing any clothes at all..."). (Feb. 2004). "Institutional investors have a comparative advantage. They can better bear short- to intermediate-term active risk. They need not add value every month, every quarter, or even every year. Their liabilities are far more diversified across time than the liabilities of most individual investors. They are therefore in a better position to profit from the short-term risks that the individual investor finds difficult to bear." Robert Arnott; & Max Darnell, Journal of Investing, *Active versus passive management: framing the decision* (Spring 2003).

[16] Mark Hulbert, *The Misuse of Past-Performance Data, in* The Psychology of Investing 152-4 (1999).

[17] *Id.*

[18] Tom Herman, *Your money matters: Weekend report: How to profit from economists' forecasts,* Wall St. J., Jan. 22, 1993; *See also* Jon E. Hilsenrath, *Where are the good forecasters when you really need them? The Economy: Forecasters' Vision Clouds During Turning Points* Wall St. J., Jul 1, 2002 ("Economists from the Federal Reserve Bank of Atlanta recently studied the past 16 years of The Wall Street Journal's forecasting surveys and found that economic prognosticators are at their worst when the economy is at a turning point, just when some sound advice on the outlook is most useful.").

the economy.[19] It is well known that earnings and intrinsic value drive equity prices.[20] Investors must be advised of the historical returns of equities.[21] Similarly, investors should be advised that Mutual Funds have underperformed the market indexes, even without taking into account the increased costs associated with Mutual Funds such as back and front end load fees.[22]

Diversification: Known as the 'Rule of 100'[23], an investor should have as a percentage of their portfolio, approximately the same number as their age, in bonds or cash. The allocation

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[19] *E.g.* Nicholas Gonedes, *A Note on Accounting-Based and Market-based Estimates of Systematic Risk*, Journal of Financial and Quantitative Analysis (June 1975).

[20] *E.g.* John Y. Campbell & Robert Shiller, *Stock Prices, Earnings and Expected Dividends,* Journal of Finance, 661-676 (July 1988) (Price/earnings ratio averaged over 30 years explains over 57% of the annual return of the market index).

[21]

	Comp	Arith	*Risk*	Div Yld	Comp	Arith	*Risk*
1926-1997	**10.6**	12.6	*20.4*	**4.6**	**7.2**	9.2	*20.4*
1946-1997	**12.2**	13.4	*16.7*	**4.3**	**7.5**	9.0	*17.3*
1966-1981	**11.5**	12.9	*19.5*	**4.1**	**-0.4**	1.4	*18.7*
1966-1997	**11.5**	12.9	*17.0*	**3.9**	**6.0**	7.5	*17.1*
	TOTAL	**NOMINAL**	**RETURN %**		**TOTAL**	**REAL**	**RETURN %**

Historical Equity Returns
Comp = compound annual return, Arith = arithmetic average of annual returns
Risk + standard deviation of arithmetic returns
Jeremy J Siegel, Stocks for the Long Run the definitive guide to financial market returns and long-term investment strategies 13 (1998)

[22]

	All Funds	Wilshire 5000	S&P 500	All Funds-Wilshire 5000
1971-1997	**11.86%**	**13.12%**	**13.16%**	**-1.44%**
1984-1997	**18.83%**	**15.91%**	**16.99%**	**-2.52%**

Equity Mutual Fund and Benchmark Returns: Annual Compound Return, Excluding Sales and Redemption Fees
Jeremy J Siegel, Stocks for the Long Run the definitive guide to financial market returns and long-term investment strategies 273 (1998)

[23] *E.g.* Fleet, Balancing Your Retirement Account, *Rule of 100-a simple approach, at* <http://www.thesystemsgroup.com/downloads/401k/Balancing%20Your%20Retirement%20Account%20(Rule%20of%20100).pdf> (Feb.13, 2002).

between stocks and bonds is the most important decision that can be made about a portfolio.[24] The stocks must also be well diversified.[25]

The majority of the movement of a stock price is a function of the over all movement of the market itself. The remainder of movement is a function of first the specific industry and finally the particulars of the company itself. This concept is easy to grasp. The purpose of diversification is to diversify away all of the industry and firm specific risk. This leaves only the market risk, also known as the systematic risk, as not diversifiable. A diversified portfolio should have no more risk than the market risk.

Thus the ability to 'pick stocks' is a limited skill mostly dependent upon the future movement of the market itself. Any deviation from the 'Rule of 100' is suspect. As a group, retail investors have consistently held an average of 45% in bonds and cash, roughly the average age of survey

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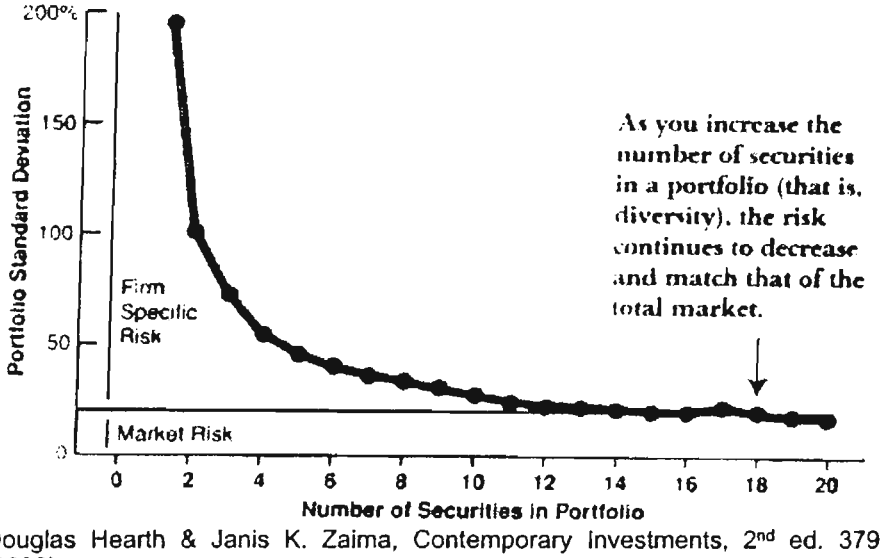
[24] *E.g.* Gary P. Brinson et al., *Determinants of Portfolio Performance*, Financial Analysts Journal 26 (Jul-Aug 1986) ("A study of 91 large US pension plans was conducted to determine the effects of investment policy, market timing, and security selection on their total return and the variability of that return. A simple framework is provided based on a passive, benchmark portfolio representing the plan's long-term asset classes, weighted by their long-term allocations. Results of data from 1974-1983 indicated that investment policy dominated market timing and security selection and explained on average fully 93.6% of the total variation in actual plan return.")*id. See also* Roger G. Ibbotson & Paul D. Kaplan, *Does Asset Allocation Policy Explain 40, 90 or 100 Percent of Performance?* Financial Analysts Journal 26 (Jan.-Feb. 2000) (validating the findings of Brinson).

[25] Modern Portfolio Theory shows that it is not the number of different stocks that are owned in a portfolio that creates diversification but rather how each stock is correlated with the other stocks in the portfolio. These concepts of diversification are well accepted and were first articulated over 52 years ago in 1952, by Dr. Harry Markowitz. He shared the Nobel Prize for this work. *Stocks concentrated within the same industry do not diversify a portfolio.*

The stocks used to generate the portfolio shown in the graph were generated randomly.

Example of Diversification across Securities



Douglas Hearth & Janis K. Zaima, Contemporary Investments, 2nd ed. 379 (1998).

respondents.[26]

The weak track record of Wall Street 'Research' not a recent event:[27] A broker should inform the retail customer that its Analyst Buy Recommendations far exceed Sell recommendations? For example, one study found this ratio to be 15 to 1.[28] Brokerage firms title these recommendations 'Research', thus any caveats should be clearly articulated.

What makes this fact all the more relevant is that ***some brokerage firms forbid their brokers from recommending the sale of stocks that are on the recommended list.*** For example, The Morgan Stanley Dean Witter & Co. MSDW Compliance Guide 1999 Solicitation Policy, states "Financial Advisors should not solicit transactions in securities that are contrary to the opinion of MSDW Research (i.e., soliciting purchase of a security when MSDW's opinion is either "hold" or 'Neutral,' or soliciting sale of a security that is rated either 'strong buy' or 'outperform')." Similarly, the Prudential Securities, Compliance Policies & Procedures, Section 6, Solicitation of Orders Policy (Aug. 1998), states "Financial Advisors are discouraged from soliciting "sell" orders against Research Department's 'hold' or 'buy' ratings. However, such solicitations are permitted provided the recommendation is suitable for the client and the Research Department's opinion is disclosed to the client."

Conclusion

TO SUMMARIZE, as the rule stands today clients are to be told about risks but not about the only tool known to Finance that describes the risks. It is like saying a doctor has to obtain 'informed consent' but the doctor only says 'everything has risk' without giving probabilities and a list of side effects and alternatives.

Brokers and investors lack a standard by which to measure risk and thus the broker is free to argue...'who could know this loss would occur'...'once in a lifetime downturn'...'risk is everywhere'...and other patiently preventable losses to investors due to bad investment advice.

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[26] ***Percent of Investor Portfolios allocated to Cash, Bonds and Bonds Funds***

	2003	**2001**	**2000**	**1999**	**1998**
CDs, Cash, Money Markets	22%	26%	28%	25%	25%
Bond Mutual Funds	7%	11%	11%	11%	11%
Individual Bonds	7%	8%	8%	8%	8%
Total Cash and Bonds	**36%**	**45%**	**47%**	**44%**	**44%**

* Question not asked in 2002

Securities Industry Association, Annual SIA Investor Survey Investor's Attitudes Towards the Securities Industry 2003, 58 (Nov. 2003), *at* <http://sia.com/publications/pdf/Investorsurvey2003.pdf>.

[27] Forgetting the Analyst Conflicts that has led to recent multi-billon dollar fines, analyst 'Research' has long been flawed. "For example, Michael Sandretto of Harvard and Sudhir Milkrishnamurthi of M.I.T. completed a massive study of the one-year forecasts of the 1,000 most widely followed companies... Financial forecasting appears to be a science that makes astrology look respectable." Burton G. Malkiel, A random walk down Wall Street including a life-cycle guide to personal investing 169-170 (1999).

[28] *E.g.* Kent L. Womack, *Do brokerage analysts' recommendations have investment value?* Journal of Finance 51 (Mar. 1996). *See also* Roni Michaely, *Conflict of interest and the credibility of underwriter analyst recommendations*, The Review of Financial Studies 653 (1999) (analysts recommendations associated with underwriting underperformed nonaffiliated analysts).

Getting MPT and 'Diversification amongst negatively correlated asset classes and diversification within an asset class' into these rules would be a HUGE step towards protecting investors. No where are these foundational tools of Finance mentioned on FINRA's website. No where does FINRA require a broker to properly inform their clients of these basic tools of Finance for which the Nobel Prize was awarded.That is shameful.

The pertinent facts and principles in this article are well known to market professionals, are part of any disclosure that claims to be informative, but are not always fully disclosed. Merely stating that markets are inherently risky and unpredictable does not satisfy the fiduciary obligation of fully informing a retail customer. It is fiduciary obligations and 'Financial Informed Consent' associated with suitability that separates the brokerage industry from being mere salesmen of disposable items such as shoes and paper products. Suitability obligations allow the brokerage industry to call itself a 'profession'. The professional obligation of 'Financial Informed Consent' benefits all parties.[29]

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[29] An unsuitable investment product is an inefficient deployment of capital. It harms the markets, as well as being a loss for the individual investor. It fosters increased regulation, an anathema to the industry.

From: STERNMAN@aol.com [mailto:STERNMAN@aol.com]
Sent: Tuesday, June 23, 2009 12:19 PM
To: Comments, Public
Subject: over regulation by FINRA

I firmly believe that financial transactions should be held to the highest of standards and those in the business subject to high scrutiny. However, when a product is NOT deemed to be a securities product, then the broker dealer and it's governing body have no right to interfere or meddle with that transaction. That is what state boards of insurance are for. Police your own industry, truly monitor large money management houses, and don't be so concerned about the average insurance broker trying to eek out a living by selling tried and true insurance products.

From: Matt Stout [mstout@integrityiwm.com]
Sent: Monday, June 29, 2009 2:47 PM
To: Comments, Public
Subject: FINRA Regulatory Notice 09-25

Dear Sir or Madam,

I am a licensed insurance professional and registered representative with a wealth advisory firm in Southern California blessed with a fairly affluent client base. I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. The measures proposed far extend the charter, the letter and most importantly, the spirit under which FINRA serves. Thos far-reaching proposal is not in the best interest of the consumer and certainly the industry. The grounds for regulatory oversight exist, and FINRA's extension is not just unnecessary, but likely clumsy in operation.

I respect, FINRA and applaud its ambitions for cleaning up poor industry conduct. That objective is meritful. This Notice, however, extends far beyond reasonable and acceptable oversight for this body. FINRA's authority should not be expanded to include non-securities products and services. Please reconsider the measure.

Best Regards,

Matthew R. Stout *director of insurance services*

INTEGRITY

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800 742 2772 | **949 394 1689** *c*
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3991 MacArthur Boulevard, Suite 215
Newport Beach, California 92660

Please consider the environment before printing this message.

-----Original Message-----
From: mstruebing@heritagefinservices.com
[mailto:mstruebing@heritagefinservices.com]
Sent: Thursday, June 25, 2009 5:35 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Mike Struebing
1010 S. 120th St. #200
Omaha, NE 68154-4208

June 25, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

Gentlemen: I am a licensed insurance professional and a registered representative with over twenty-three years in business. I am appalled at the "takeover" that seems to be occurring by FINRA. I fail to understand how an agency that has been authorized to deal with the securities industry has any right to take on regulation of fixed insurance products.
These products are already highly regulated in each state by the state insurance departments.

You have already received 100's of comments that list all of the legitimate reasons why this should not occur. Let me add one more to your list. If you look at LIMRA surveys you know that the people of this country are already underserved in the area of insurance. What I see more and more of each day are agents who are dropping their securities licenses because of the increased regulation, the resulting paperwork and the increased costs this creates. As a result more of my comrades are going out of business and that means fewer professionals to serve the public.
If your intent is to take over the industry then moving into the fixed side will surely do it. Unfortunately if the present trend continues you will have no one to regulate and you too will be out of business.

I strongly urge you to contintue to focus on the securities industry and let the state insurance departments do their job as well.

Sincerely,

Mike Struebing
402-558-6860

Do not demand suitability except for the product I am selling. No one knows every single thing about a client because they do not tell you. You are penalizing men who have been in the business like me for 44 years with burdens that they should not have to be skilled upon to simple sell the person a fixed annuity. You are killing the small business man and will further hurt people and destroy the tax structure of this country. Do you want me to pay taxes on 100,000 a year or not pay any taxes on 25,000 a year. Do not kill the goose that laid the golden eggs. Agent. George

From: Sunderland, Dave [mailto:dave@sunderlandgroup.com]
Sent: Friday, June 26, 2009 8:55 AM
To: Comments, Public
Subject: finra oversight of non security products

the insurance commissioners in the respective states have done and will continue to do a very good job at regulating and overseeing the fixed insurance products that people have at their disposal to purchase. Finra should continue to try to do a better job at trying to keep their own securities house in order rather than expanding
their non-effective arm into other non-seucirties related issues. History tells us that as a organization their own house isn't well run and that should be enough to curtail any other adventures into areas that they aren't experienced in._____

David Sunderland
The Sunderland Group
2102 Great Northern Drive
Fargo, ND 58102
(800) 373-9807

From: Paul SuPrise [mailto:sickpayplans@pa.metrocast.net]
Sent: Tuesday, June 23, 2009 11:14 AM
To: Comments, Public
Subject: Opposing Expansion of FINRA Suitability Obligations to Recommendations that do NOT Involve Securities

Please, enough of the mindless regs that only serve to layer, complicate and delay crucial decision making by affected business owners. Please keep B/D's out of non-securities matters.

B/D's are busy enough with their current level of cumbersome compliance issues and I suspect the majority of small B/D's (and many large ones) are ill equipped, both from a time and knowledge standpoint, to adequately and effectively monitor the myriad non-securities marketplace transactions and recommendation being made to prospective business owners.

There is adequate non-securities regulation from the states and competition within the industry to help assure (and insure) that sound recommendations are being offered to business owners.

Thanks,

Paul SuPrise, CLU, LTCP
First Capital Benefits Group
770 Nuangola Road * Mountain Top, PA 18707-9507
Work 570-868-6871 * Fax 570-868-6872
paul@sickpayplans.com * www.sickpayplans.com

"Section 105 Qualified Sick Pay Plan"

Most firms do not realize that the IRS can disallow the deduction of wages paid to a disabled employee, including payments to owner, family member and key-employees, because such wages are not considered a necessary business expense unless they are paid pursuant to the terms of a Qualified Sick Pay Plan (under Section 105). Importantly, the QSPP must be in place prior to the disability. So, if you plan on paying yourself or any employee during a disability, do it legally, with a QSPP. You, not Uncle Sam decide who may participate in the Plan. It's easy to install and does not require filing with the IRS. NOTE: Premiums paid on behalf of an employee under an insured QSPP are fully deductible and are not shown to the employee as income.

Revised and updated 02-04-08, 11:53 AM

From: Rona Swanson [mailto:rona.swanson@american-national.com]
Sent: Tuesday, June 23, 2009 1:19 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

I just wanted to ask that the FINRA oversight of registered rep's activities be reserved to securities issues only.

The strategy to further burden those of us who are doing our utmost to provide thoughtful and contemplative assistance to our clients will not serve the public any better.

Too often, the response of regulatory firms is to tighten the clamps even further on those in the industry and lay more compliance weight on everyone instead of specifically finding those who spurn the rules and making an example of them.

We have rules enough on the books for anyone who cares a whit about conducting themselves in an ethical manner. Forcing suitability forms and disclosures for every conversation we may have will not better protect the public and will only introduce new and more formidable hurdles for those of us who are just trying to take care of their clients.

Thank you,

Rona Swanson
American National Insurance
829 West Center Avenue
Visalia, CA 93291-6013
(559)733-0900
(559)733-5107 FAX

From: Elwood Syverson [esyverson@ruralins.com]

Sent: Tuesday, June 23, 2009 10:16 AM

To: Comments, Public

Ms. Asquith,

I am a licensed insurance agent and registered representative and I am writing to you today to strongly oppose FINRA Regulation Notice 09-25. The expansion of regulatory authority over non-securities based products is apparently an attempt to usurp the individual state's authority over regulating agents within their boundaries and create another layer of bureaucracy. As you know, there are many laws and regulations in place to deal with unscrupulous individuals that place questionable products and make unsuitable recommendations currently. Strongly enforcing ethics violations at the state level is a much more effective tool in reigning in these individuals. It is clear that there is no tax money available to fund these ill begotten regulations; therefore, people in my line of business would suspect that there would be some sort of fee structure needed to fund this folly. As an independent business person, I cannot afford more fees and taxes and continue to provide jobs. I suspect this action is a "knee-jerk" reaction to market conditions and media hype that tend to make bureaucrats and legislators believe that states insurance commissioners are not doing their jobs. Creating another level of bureaucracy will not solve individual issues, nor will it enhance market conditions. Please reconsider this regulation.

Sincerely,

Elwood Syverson, LUTCF
The Syverson Agency, LLC
115 East State Street
Mauston, WI 53948
(608)847-5552
(608)847-1172-Fax

Registered Representative/
Securities & services offered through
EquiTrust Marketing Services, LLC
5400 University Avenue
West Des Moines, IA 50266
(877)860-2904, Member SIPC
EquiTrust Marketing Services is not an affiliate of
Rural Mutual Insurance Company.

NAIFA
MEMBER

From: Roland X Szukhent [Roland.X.Szukhent@ampf.com]
Sent: Tuesday, June 23, 2009 1:47 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

Honorable Sirs,

I am a licensed insurance professional and registered representative.

I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

Yes - Aggressively prosecute and penalize any individual that would provide unsuitable sales and engage in any misleading sales practices, but FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

FINRA's authority should NOT be expanded to include non-securities products and services.

In addition, insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators.

Adding FINRA rules to these products will result in a conflicting and confusing regulatory system, and in the end consumer protection, the main goal, will be diminished.

It would be inappropriate for FINRA to expand or revise current suitability issues while this whole debate is still just getting underway, who knows what bigger or sweeping changes may come in the next few months.

I urge you NOT to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Kindly consider my views on this issue, as I know they reflect the majority of compliant professionals in this industry.

Thank You

Roland J. Szukhent, Jr.
ASSOCIATE FINANCIAL ADVISOR
With the practice of Roland J. Szukhent, Sr., CFP®
an Ameriprise Platinum Financial Services practice
Ameriprise Financial

Ameriprise Financial Services, Inc.
3-5255 West Pierson Road | Flushing, Michigan 48433
Office: 810.720.6400 | Fax: 810.720.6401
Roland.X.Szukhent@ampf.com
ameriprise.com

We shape financial solutions for a lifetime.®

From: ctaggart@taggartcompany.com
Sent: Tuesday, June 23, 2009 5:55 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Christopher Taggart
PO Box 2548
Cody, WY 82414-2548

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

For 24 years now I have been a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. FINRA's authority should not be expanded to include non-securities products and services.

Insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. Should FINRA impose these new rules, it will result in conflicts and confusion and will detract from the goal of consumer protection. FINRA does not need to be involved in expanding or revising current suitability requirements. I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Christopher J. Taggart, CLU, ChFC, LUTCF
307-527-6204

From: chuck@tayfin.com
Sent: Monday, June 29, 2009 11:06 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Charles Taylor
501 E Taylor St
Creston, IA 50801-4057

June 29, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

As a licensed insurance professional and a registered representative, I wish to express my opposition to expanding FINRA'S control over insurance products.

These products are fixed and guaranteed by insurance company's. These companies are regulated by the state insurance commissioner's. A few years ago there were some products on the market that were questionable but that has already been remedied. The consumer concerns that have come to light now were from that period 5 to 10 years ago and have already been corrected.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Charles A Taylor
641-782-4848

From: Hugh Taylor [mailto:hetaylor@taylorinsnm.com]
Sent: Thursday, June 25, 2009 3:43 PM
To: Comments, Public
Subject: FINRA

Please be advised that as a tax paying US citizen, I am vehemently opposed to any expansion of FINRA into non-securities related insurance & investment products. We have more & more government intrusion into the private sector that is counter productive to the growth of the nation's economy.
We need proper regulation & implementation of regs already on the books, not more federal government regulation. We need a smaller federal government budget, not larger.
Thank you,
Hugh Taylor
1901 S Washington
Roswell, NM 88203

From: Cynthia M Thixton [cmthixton@ft.newyorklife.com]
Sent: Tuesday, June 23, 2009 4:14 PM
To: Comments, Public
Subject: Comments re FINRA expanded role in oversight

I am a licensed insurance professional and registered representative with over 18 years in the insurance industry. I do not believe that FINRA's oversight should be expanded to fixed products. The public is acutely aware of the risks in the securities investment world at this time. Fixed products are one area where clients can seek shelter, and try to reposition some of their assets into safe, growth vehicles. I was not aware that FINRA has any expertise in this area!

When any product references a securities index, such as indexed annuities, I believe those transactions should be more transparent and regulated. I also believe that those agents who have knowingly and purposely mislead clients should be prosecuted to the fullest extent of the law possible.

Will FINRA then regulate bank CDs as well? The public will be more confused than ever if their safe havens become harder to access, obtain and understand.

Thank you for your time.

Cindy Thixton

Cynthia M. Thixton, LTCP

Financial Services Professional

New York Life Insurance Company Agent

Registered Representative offering Securities through NYLIFE Securities, LLC

(member FINRA/SIPC)

City Place One, Suite 260

Creve Coeur, MO 63141

314-567-9080

314-994-6483

From: clyde.thomas@nmfn.com
Sent: Thursday, June 25, 2009 4:05 PM
To: Comments, Public
Cc: clyde.thomas@nmfn.com
Subject: FINRA Regulatory Notice 09-25

Good afternoon,

The recent suggestion that FINRA should become involved in regulation outside of securities is of deep concern. I personally feel that we need firm and appropriate regulation to protect the consumer from deceptiveness and incompetence in the financial services marketplace. However, FINRA is not the entity to be involved in the insurance sector of that arena. While there is work to do, the overlapping and confusion that would result from FINRA trying to regulate areas outside of securities where it currently has little experience, while there is already substantial regulation by others who do have experience in those areas, would do little, if anything, to benefit the consumer and could create huge conflicts and confusion in regulatory and compliance related activities. Changes to standards of care on the investment side are currently under debate and are not yet enacted. I sincerely hope that FINRA will back off on the current proposal to include non-securities products and services, at least until the dust settles on all of the other changes that are pending.

Thank you.

C. Clyde Thomas, II

C. Clyde Thomas, II, CFP®, CLU®, CMFC
Financial Advisor
227 Franklin Street, Suite 206; Johnstown, Pennsylvania 15901

Office: 814.539.9230
E-mail: clyde.thomas@nmfn.com

For online account access and customer service, visit my internet site: http://www.nmfn.com/clydethomas.

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In the event that you cannot click on the above link, the Northwestern Mutual E-Mail Opt-out form can be found at the following URL: https://service.nmfn.com/cbpeopt/EmailOptOut.do.

Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: dht2004urr@bellsouth.net [mailto:dht2004urr@bellsouth.net]
Sent: Wednesday, June 24, 2009 11:17 AM
To: Comments, Public
Subject: Opposing FINR

I oppose the suitability of of products through FINR, as an indepedant insurance agent. I think that each carrier should be accoutable for this concern. Please address any follow up with me.

Thanks,

Heath

Heath Threadgill, LUTCF
(843) 537-9912 telephone
(843) 537-0278 fax
dht2004urr@bellsouth.net email

From: cktilley@brtc.net
Sent: Monday, June 29, 2009 12:30 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

To Whom It May Concern:

I am an insurance professional that is licensed and appointed in the state of Kentucky. I am sending this letter to express my STRONG opposition to the expansion of FINRA's suitability obligations when making recommendations that involve non-securities transactions.

Non-Securities transactions are currently out of FINRA's jurisdiction. Furthermore, the products and services that fall into this category cover such a broad spectrum that it would be impossible for FINRA to regulate them efficiently using the resources that they have currently.

I would also like to point out that these products and services are already heavily regulated at the state level and it would be almost impossible to comply with both the state's regulations and FINRA's regulations simultaneously without conflict. These conflicts would add more confusion to the mix, and ultimately result in increased cost to the consumer.

For these reasons I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. The you for considering my views on the issue.

Sincerely,

Chris Tilley

From: J.Darlene Tucker [mailto:J.Darlene.Tucker@mwarep.org]
Sent: Tuesday, June 23, 2009 6:14 PM
To: Comments, Public
Subject: FINRA

I am a RR and strongly oppose the expansion of FINRA suitability standards to any non-securities products or strategy. Doing this would put the RR in the position of having to duplicate compliance with insurance and other regulations.

For a fee based advisor this is going to increase costs that will have to be reflected in higher fees to the client while providing the client with no additional value.

It will also create an unlevel playing field where an insurance agent will be able to do business much easier than a RR. This results in a person with less training and expertise being rewarded for not having the securies license, and essentially having more flexibilty in conducting business than the more highly equipped RR.

In today's environment, as always, rules and regulations need to make the best trained advisor more readily available to every client. We should not put the well trained advisor further out of reach of the average, middle income family.

Thank you for your consideration,

Darlene Tucker
Certified Financial Planner(TM) Professional

Darlene Tucker, CFP(R), FICF
Financial Representative
10145 Hwy 114 West, P.O. Box 129
Scotts Hill, TN 38374
Ph. 731-549-2181
Fax 731-549-2191
J.Darlene.Tucker@mwarep.org

Darlene Tucker
Registered Representative
Securities offered through MWA Financial Services Inc., a wholly owned subsidiar of Modern Woodmen of America
1701 1st Avenue
Rock Island, IL 61201
309-558-3100
Member: FINRA, SIPC

Modern Woodmen

From: john.tuttle@nmfn.com [mailto:john.tuttle@nmfn.com]
Sent: Tuesday, June 23, 2009 10:31 AM
To: Comments, Public
Cc: Mlaptew@naifa.org
Subject: "FINRA Regulatory notice 09-25"

Dear Ms. Asquith....

I am writing to you because I don't believe that FINRA should try to expand its regulations to cover areas that are not securities. I believe that you should try to harmonize your regulations with the other regulators who have jurisdiction over non security insurance and banking products to provide suitability for purchase.

There is nothing wrong with the concept of a product being suitable for the customer. But having different regulators argue over their turf is a problem. As a society we would be better off simplifying regulations so that our world is less complex.

As someone who delivers insurance and investment products to clients, I am concerned about the ever growing complexity of the regulations that we live with. Please refrain from poaching into the insurance regulator's world.

Thank you,

John

John S. Tuttle, CLU, ChFC, Wealth Management Adviser

6314 Fly Road, PO Box 4718, Syracuse, New York 13221
Phone - 315/671-1820 Fax – 315/434-9057
john.tuttle@nmfn.com

when this agent represents insurance companies in addition to NM or its affiliates. NM and The Greater New York Group are not broker-dealers or registered investment advisers."

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Northwestern Mutual
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4797.

From: Tynes, Ken LUTCF (46 - Marion) [mailto:Ken.Tynes@sfbcic.com]
Sent: Tuesday, June 23, 2009 10:02 AM
To: Comments, Public
Subject: SUITABILITY OBLIGATIONS

I AM A LICENSED INSURANCE AGENT OF 25 YEARS AND ALSO AM A REGISTERED REPRESENTATIVE FOR OVER 10 YEARS.I AM AGAINST EXPANDING FINRA'S SUITABILITY OBLIGATIONS TO COVER NON SECURTIES SALES.I STRONGLY SUPPORT STRONG PUNISHMENT FOR PEOPLE WHO PREY ON THE ELDERLY WITH MISLEADING SALES PRACTICIES.THIS PUTS A BLACK EYES ON ALL AGENTS WHETHER FAIR OR UNFAIR.NON SECURTIES SALES ARE ALREADY UNDER REGULATIONS FROM STATE INSURANCE DEPARTMENTS AND OTHER STATE REGULATORS.THANK YOU VERY MUCH FOR YOUR HELP IN THIS MATTER.KEN TYNES,AGENT AND REGISTERED REP.

From: Udell, Bruce [Bruce@wealthenjoyment.com]
Sent: Tuesday, June 23, 2009 2:49 PM
To: Comments, Public
Subject: Expanding FINRA's suitablility rules to all financial products or strategies

I am a licensed insurance professional that focuses on estate planning, life insurance and asset management for high net worth individuals. I am against FINRA including all financial strategies and products under the FINRA "know your customer" and " suitability" rules. I believe FINRA is not qualified to judge high level estate planning strategies and charitable strategies along with all of the financial products that go along with them. You would need an unbelievable legal staff to evaluate every plan and the appropriate products within that plan. Personally, I don't want to spend my time teaching your auditors about estate planning so that they can understand all of the nuances that make a particular insurance product or combination of products appropriate for a particular tax strategy.

I do believe that the public needs to be protected from unscrupulous sales of products, but there are other SROs that already do that outside of the securities world.
Sincerely,
Bruce Udell

Udell Associates
Estate Planning Designers & Developers

Bruce S. Udell
CLU, ChFC, MEP, RFC
President
Udell Associates
1605 Main St. Ste 1110
Sarasota, FL 34236
Phone 941-951-0443
Fax 941-951-6307
www.wealthenjoyment.com

From: Bruce Umeda [bumeda@pacificguardian.com]
Sent: Tuesday, June 23, 2009 2:28 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25.

To Whom It May Concern:

I am a licensed insurance professional. I am writing to you because I strongly oppose expanding FINRA's suitability obligations to recommendations that do not involve securities.

In the same breath, I do believe that people who promote unsuitable sales and engage in misleading sales practices should be prosecuted.

Insurance is already monitored and regulated at the State level through the state insurance commissioner's office. It makes no sense to have two separate regulators. It will only create confusion and possible conflicts to both the producer and consumer.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.

Thank you for your consideration.

Bruce Umeda, AVP

Pacific Guardian Life

Direct line: (808) 942-1323

Fax line: (808)942-1284

Cellular: (808) 741-3325

From: Unger, Susan [mailto:smunger@finsvcs.com]
Sent: Tuesday, June 23, 2009 11:18 AM
To: Comments, Public
Subject: Regulatory Notice 9-25

FINRA:

I am a licensed insurance professional of MassMutual Financial Group Inc. and a registered representative of MML Investors Services Inc. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I do firmly believe that people who promte unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resouces or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securities products and services.

This expansion of FINRA's suitability obligations is definitely unwise as insurance and other non-securities products are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulations. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

It would be inappropriate for FINRA to expand or revise current suitability requirements while there is a debate going on with policymakes on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders on the issues concerning the standard of care which broker/dealers and investment advisors owe to their clients.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for this consideration.

Regards,

Susan M. Unger

delete all copies.

From: Mary Ann Wagner [mailto:MaryAnn.Wagner@catholicknights.org]
Sent: Tuesday, June 23, 2009 12:30 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

As an insurance professional, I oppose imposing FINRA regulations on the sale of insurance products. If the insurance is a securties-based product, then that product should and must fall inder FINRA's jurisdiction. Other insurance prodcuts do not and should not be mixed with these regulations.

Mary Ann Wagner
LUTCF, CSA, FICF
N6049 Deerpath Lane
Plymouth, WI 53073

From: Carl WALBERT [dcmdre@msn.com]
Sent: Thursday, June 25, 2009 3:39 PM
To: Comments, Public

I do not believe we need additional bureaucracy in insurance. Securities regulation for fixed annuities is unnecessary.

From: pward@thompsonfinancialgroup.net [mailto:pward@thompsonfinancialgroup.net]
Sent: Thursday, June 25, 2009 5:13 PM
To: Comments, Public
Subject: comment
Importance: High

To Whom it May Concern,

It is getting to point where we are having a hard time complying with every possible rule from every possible government entity while our commissions fall. We will soon
be at a point where we will no longer be giving any advice on any subject. That will soon be the purview of government bureaucrats. Like getting advice from the post office.
I suggest rather than more regulations, you enforce the one's you have and make an example of the people who violate the law.

Peirce Ward
6302 Fairview Road, Suite 500
Charlotte, NC 28210

(704) 714-3165
(704) 366-6900 FAX

From: Wayne L. Warren [mailto:wwarren@ft.newyorklife.com]
Sent: Tuesday, June 23, 2009 12:43 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Thank you for the opportunity to comment on the proposed regulatory consolidation of the various rules and interpretations governing suitability and the consideration that FINRA may expand the scope include "all" investment products whether or not they involve securities.

I would strongly urge FINRA not to include any products that are not securities in rules that would review by the RR broker/dealer. There is sufficient regulation and oversight by the state insurance regulators and the compliance departments of the insurance companies to protect the public. Adding additional layers of regulations and review to those that already exist is redundant and unnecessary and will result in the products that have higher costs to the consumer. I hope you will not include any products that are not securities in the rules of suitability requiring FINRA oversight.

Thank you.

Wayne L. Warren, CLU, ChFC, MSFS
613 South Park Drive
Broken Bow, OK 74728
800-257-5402 or 580-584-9300; FAX 580-584-3559

Wayne L. Warren, CLU, ChFC, MSFS
Financial Services Professional
AR Insurance License #34062; CA Insurance License #OC58962
Agent, New York Life Insurance Company
Registered Representative offering securities through NYLIFE Securities LLC (member FINRA/SIPC)
2431 E., 61st Street, Suite 650, Tulsa, OK 74136
(918) 587-3301

From: Weaver, Michael [mailto:mweaver@htk.com]
Sent: Tuesday, June 23, 2009 10:48 AM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25 - Attn Ms. Marcia Asquith

I am a licensed insurance professional, registered representative in Texas and member of NAIFA. With respect to your recently issued regulatory notice 09-25 regarding suitability obligations and asking for comment, I offer the following. My understanding is that this notice could be interpreted to expand such determination of suitability by the registered rep to include insurance and non securities products. I do strongly object to any expansion of FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over non securities products nor is that their base area of expertise. Insurance and other non securities items are already regulated in each state. I do not believe that FINRA is trying to make a statement regarding the quality or ability of existing state regulators to manage their responsibilities. It appears to me to be more appropriate to coordinate with NAIC and state bodies already performing this task. To layer in an additional level of regulation would create an additional burden on representatives trying to provide advice to those in need of their services, result in differing regulatory requirements that could cause confusion, and in some instances, potentially impede the goal of consumer protection.

FINRA's role in regulating and policing against unsuitable and misleading sales practices is essential to the integrity of the securities industry. It must recognize and respect the similar role currently played by existing regulators in non securities areas.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. I appreciate your request for comment and your consideration of my thoughts on this issue.

Michael J. Weaver
Financial Advisor
Ackley Financial Group
16479 Dallas Parkway, Suite 850
Addison, Texas 75001
Phone 469-737-4059
Fax 469-737-4084
Cell 214-282-8375
mweaver@htk.com

named above. It may contain confidential and privileged information. If you have
received this communication in error, please notify the sender immediately and
destroy or delete the original message. Also, please be aware that if you are not
the intended recipient, any review, disclosure, copying, distribution or any
action or reliance based on this message is prohibited by law.

From: Ted Weaver [mailto:ted.weaver@rbwiser.com]
Sent: Wednesday, June 24, 2009 4:12 PM
To: Comments, Public
Subject: FINRA Regulatory notice 09-25

To Marcia E. Asquith:

I am a licensed insurance professional and registered representative. I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.
I want to state that I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should always be prosecuted and be subject to meaningful sanctions. But I do believe that FINRA does not have jurisdiction over products which are not securities, FINRA nor do broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRA's authority should not be expanded to include non-securites products and services. For these reasons I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for consideration of my point of view on this issue.

Ted Weaver

From: Wellford, Walker [mailto:wlwellford@finsvcs.com]
Sent: Friday, June 26, 2009 2:47 PM
To: Comments, Public
Subject:

As an insurance and investment professional I am disgusted to learn about additional needless regulations. The Federal government is to big already to become involved in ttrying to regulate non security transactions. Please find some useful use of your time than add unnecessary regulations to an already top heavy plan.

Walker L. Wellford III, CLU
MassMutual Financial Group
8245 Tournament Drive #300
Memphis, TN 38125
901-746-6361

Buckeye
Planning Concepts Inc.

1812 University Blvd.
P.O. Box 2363 • Anderson, IN 46018-2363
765.644-2781 Fax 765.644.8556
www.buckeyeplanning.com

PLAN - INVEST - INSURE

June 23, 2009

Office of the Corporate Secretary-Admin.

JUN 26 2009

FINRA
Notice to Members

Marcia E. Asquith
FINRA
Office of Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

Re: Proposed Regulatory Notice 09-25

Dear Marcia ,

I'm writing to oppose the above notice. FINRA needs to stick with securities issues and trying to reach into non-securities areas.

FINRA does not have jurisdiction over products and services which are not securities, and its authority should not be expanded to include such products and services. In addition, insurance and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in conflicting regulatory requirements, not to mention privacy issues. Finally, policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders, are currently debating issues concerning the standard of care which broker/dealers and investment advisors owe to their clients and considering whether such standards should be expanded or changed going forward. It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, since further broader-scale changes may be made within a matter of months.

I oppose inappropriate and far reaching measures being proposed.

Thank You,

C. David Weisheimer CLU ChFC RFC
President

From: Fran Larson [mailto:Fran@Taxfavoredbenefits.com] **On Behalf Of** R. DAVID WENTZ
Sent: Tuesday, June 23, 2009 5:21 PM
To: Comments, Public
Subject: FINRA Regulatory noteice 09-25

To Whom It May Concern:

I am a licensed insurance professional and registered representative. I am writing to you to strongly voice my objection to the expansion of FINRA's suitability obligations to recommendations that do not involve securities.

In doing so let me clearly state that I firmly believe that persons who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions.

Having said this, FINRA does not have jurisdiction over products and services which are not securities. It also appears to me that FINRA already has enough to do without taking on this responsibility. Stick to what you do best without diluting your capability to perform your existing valuable service.

Thank you for considering my brief comment and opinion.

Sincerely

R. David Wentz, J.D., CLU, ChFC
Chief Executive Officer
Tax Favored Benefits, Inc.
4801 W. 110th Street, Ste. 200
Overland Park, KS 66211
Ph: 913-648-5526 800-683-3440
Fax: 913-648-6798

From: buster@hickorytech.net
Sent: Tuesday, June 23, 2009 10:26 AM
To: Comments - Public
Subject: Regulatory Notice 09-25

Buster West
46451 Evergreen Lane, Cleveland, MN, 56017 Cleveland, MN 56017

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am writing to you because I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA does not have jurisdiction over products and services which are not securities.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Sincerely,

Buster West
507-934-4251

From: mwest@forkercompany.com [mailto:mwest@forkercompany.com]
Sent: Tuesday, June 23, 2009 9:57 AM
To: Comments, Public
Subject: Please Oppose FINRA Non-Securities Suitability Oversight

I am a licensed insurance professional and registered representative. I am writing to you because I strongly objectto expanding FINRA's suitability obligations to recommendations that do not involve securities.

FINRA's authority should not be expanded to include non-securities products and services.

Utilizing FINRA suitability standards for non-securities products and services could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

Finally, it would be inappropriate for FINRA to expand or revise current suitability requirements while debate is already in the works with the SEC, in regard to broker/dealer and investment advisor standards of client/consumer protection.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you for considering my views on this issue.

Mike West, CLU

www.forkercompany.com

The Forker Company
964 Grove Road
PO Box 2040
Zanesville OH 43702-2040

740 452-4596
740 454-9584 (fax)

From: Ralph [mailto:ralph@whitetax.com]
Sent: Thursday, June 25, 2009 6:13 PM
To: Comments, Public
Subject: FINRA Notice 09-25

I strongly oppose any expansion of Rule 2111 to include "non-securities, services and strategies." I already firmly suppot all suitability requirements for the products I off and then some. Creating overlaps in jurisdiction and added burdens on the brokerage industry could be extremely harmful to my business and to consumers. Thank you for considering my comments.

Ralph P. White
White & Associates
California Teachers Tax Service
(619) 589-9020
(619) 589-6836 FAX
ralph@whitetax.com

Northwestern Mutual
Investment Services, LLC

Jeffrey B. Williams
Vice President & NMIS Chief Compliance Officer
611 East Wisconsin Avenue
Milwaukee, WI 53202-4797
414-665-1924 office
414-625-1924 fax
jeffreywilliams@northwesternmutual.com

June 29, 2009

Via E-Mail

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1560

RE: Regulatory Notice 09-25 – Proposed Amendments to the Suitability and Know Your Customer Rules

Dear Ms. Asquith:

Northwestern Mutual Investment Services, LLC ("NMIS")[1] appreciates the opportunity to comment on FINRA proposed rule 2211. In addition to our comments in this letter, we also support in substantial part the comment letters submitted on behalf of Financial Services Institute, the Committee of Annuity Insurers and Securities Industry and Financial Markets Association.

The proposed rule includes a number of changes to existing NASD Conduct Rule 2310 and the accompanying Regulatory Notice 09-25 also requests comments on certain aspects of the proposed FINRA Rule. Specifically:

1. Proposed applicability of suitability obligations to "investment strategies" as well as securities;
2. Proposed expansion of a member firm's duty to access any recommendation in light of any information "known by the member or associated person"; and
3. The request for comment on expanding the suitability obligations to apply to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendation involves a securities product.

[1] NMIS is a registered broker-dealer and wholly owned subsidiary of The Northwestern Mutual Life Insurance Company.

Marcia E. Asquith

June 29, 2009

Page Two

NMIS requests that FINRA consider the following in regards to the proposed rule and accompanying Regulatory Notices.

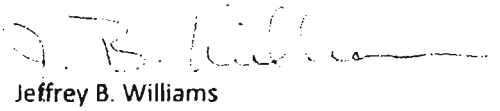
- Recommended Investment Strategy - "Investment strategies" would need to be further defined in order to allow member firms to develop and implement policies and procedures to meet FINRA's expectations. Additionally, most firms have developed and rely upon electronic systems to supervise securities *transactions,* and it would be very difficult and expensive to modify these systems to supervise *investment strategies.* Unless FINRA is able to define Investment Strategies, NMIS requests that the proposed rule mirror the existing rule in that suitability is triggered by a transaction, not an investment strategy.

- Use of Information Known by the Member or an Associated Person – The existing rule requires members to assess only the information disclosed by the client. Member firms have developed investor applications and questionnaires to obtain information needed to determine suitability and develop supervisory procedures and processes. The proposed rule is too subjective, overly broad and would make it extremely difficult for firms to develop suitability guidelines and supervisory procedures and processes. NMIS requests that the proposed rule mirror the existing rule in that information disclosed by the client is assessed.

- Non-Securities Product Recommendations – NMIS does not believe that the suitability obligation should be applied to recommendations of investment products other than securities. Rules and guidance exist for most, if not all, non-securities products (e.g., fixed life insurance or annuity products), and subjecting non-securities products to a new set of standards and rules would create different and possibly conflicting regulatory obligations and supervisory demands for member firms.

We appreciate your consideration of our comments. Please let me know if you have any questions regarding our concerns. If you have any questions, please contact me at 414.665.1924.

Very truly yours,



Jeffrey B. Williams
Vice President and Chief Compliance Officer

RITA WISHARD
LUTCF

CARRIE OVERBY
AGENT

JODY PETERSON
AGENT

WISHARD INSURANCE

922 West Kemp, P.O. Box 876, Watertown, SD 57201
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wishardins@iw.net

NAIFA
National Association of Insurance and Financial Advisors

FINRA
1735 K St. NW
Washington, DC 20006-1506

June 23, 2009 Office of the Corporate Secretary-Admin.

JUN 26 2009

FINRA
Notice to Members

RE: FINRA Regulatory Notice 09-25

To Whom It May Concern:

I am a licensed insurance agent. I am writing to you because I strongly object to expanding FINRAs suitability obligations to include non-security products.

I firmly believe in prosecution for misleading sales practices by agents; however, I feel that FINRA does not have jurisdiction over products and services which are not securities. Neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions. FINRAs authority should not be expanded to include non-securities products and services.

Insurance and other non-security products are already subject to comprehensive state regulation by state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulation which will detract from the goal of consumer protection.

A debate is presently, proceeding in Washington, D.C. concerning the standard of care which broker/dealers and investment advisors owe their clients. It would be inappropriate for FINRA to expand current suitability requirements (to non-security products) while this debate is on-going. More changes may be made before debate ends.

For the above mentioned reasons, I urge you to stop the expansion of FINRAs suitability obligations to include non-security products. I thank you for your consideration on this issue.

Sincerely,

Rita Wishard

Rita Wishard, LUTCF
Agent

From: rory@rorywold.net [mailto:rory@rorywold.net]
Sent: Tuesday, June 23, 2009 12:46 PM
To: Comments, Public
Subject: Regulatory Notice 09-25

Rory Wold
2019 Aero Way Ste 101
Medfprd, OR 97504-9789

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I am a licensed insurance professional and registered representative. I am writing to you because I object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

I firmly believe that people who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, I do not believe FINRA has jurisdiction over products and services which are not securities. Also, there is the issue of state jurisdiction vs. federal with the non-security products.

For the reasons stated above, I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities.
Thank you for considering my views on this issue.

Sincerely,

Rory C Wold

From: Dennis Wong [mailto:denniswongclu@yahoo.com]
Sent: Tuesday, June 23, 2009 2:02 PM
To: Comments, Public
Subject: Regulatory Notice 09-25's expanding suitability obligations!!!??

Sirs:

As a licensed insurance agent and a registered representative (securities licensed) I would like to express that expanding FINRA's role to cover non-security areas does not make sense since the regulations for non-securities is not FINRA's concern. Consumers will not be well served if their advisors (insurance agents, securities brokers, etc.) need to comply with various overlapping compliance agencies of various government levels. The federal agencies should be working *through* the various state agencies towards the end in mind...consumer disclosures, education and competent licensed advisors! My personal clients' relationships have evolved into an educational/tutoral financial service, with full disclosure of my compensation thereof. Further complicated, regulatory processes will not change my relationships but will certainly cause my business expenses to increase!

Your concern should be one of working with all of the stakeholders (consumers, advisors and state regulatory agencies) towards the common end: consumer protection/awareness [towards scams].

Thank you for allowing my input.

Dennis C. Wong, CLU, ChFC, RHU
NAIFA member

From: Pamela Yellen [lynnpmi@att.net]
Sent: Tuesday, June 30, 2009 7:31 AM
To: Comments, Public
Subject: FINRA Regulatory Notic 09-25

To whom it may concern,

Although I am not a financial advisor or insurance agent, I have been a business consultant to more than 30,000 financial advisors over the past two decades. I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities.

While I absolutely believe that anyone who promotes unsuitable products or engages in misleading sales practices should be prosecuted, FINRA does not have jurisdiction or the product-specific expertise needed to oversee non-securities transactions.

I am strongly opposed to expanding FINRA's authority over non-securities products.

Thank you for considering my views on this issue.

Sincerely,

Pamela Yellen

From: Gary Young [mailto:garyy@thefinancialgroup.biz]
Sent: Wednesday, July 01, 2009 8:53 AM
To: Comments, Public
Subject: proposed expansion of domain

There should be no expansion of FINRA oversight powers. A study should be done to see if compliance issues are costing consumers more than the crooks were.

The rules set create a mountain of paperwork, imposes on clients, wastes time and creates law beakers out of good representatives that are good to their clients and know the products, but inadvertently break bureaucratic rules that make no difference to the clients protection in real life.

A case in point. I now have to update suitability forms every three years on my clients. So I get a guy putting $25 a month into an mutual fund. Has been for 10 years. Call him periodically on his insurance and to see if he wants to increase his investments. I make $6 a year in commissions after my BD takes their share for supervising me. I now have to either mail or see this guy, ask him personal confidential information and send it to my BD. He asks why and the best answer I can give is "because." This makes him suspicious because he feels like he is filling out an application. I send this to my BD. I ask what they do with it and they say review it. I ask if the guy is unsuitable for this $25 mutual funds deposit what they will do, can they make him stop or sell his funds. No not really, although we could recommend it. And if he doesn't what would they do. Stop my commissions. So I ask what they do with the forms and they say file them. And I ask why. They say because they have to have them if they get a FINRA audit. I ask what happens if I don't get the form completed. And they say they will stop paying commissions. This in fact would increase my profits on this client since I loose money on his account. So now he would have no servicing representative.

Since this seems to make sense to those making the rules I can only beg that you make less of them or the costs of products to consumers and the cost of representatives doing business will all go up. That is bad for consumers.

I have consumers begging me to stop getting annual prospectuses. Objecting to the mailing costs and substantial amount of forest depletion dedicated to this. Reps. spend a phenomenal amount of time tossing old and getting new prospectuses. Over 90% aren't read due to information overload. You could probably get everything on one page they need to make a decision with the right to get a complete prospectus, and have it available on line at all times. The cost savings would be incredible. Mandate a report to shareholders on any CHANGES ONLY so they really are aware of new information without it being buried in a 30 page prospectus with no idea of what has changed, forcing reading the whole thing.

Gary Young
Phone: 319-393-8434
FAX: 319-393-8570
Cell: 319-350-8073
Email: garyy@thefinancialgroup.biz
Web: www.thefinancialgroup.biz

From: Michael J. Youso [mailto:Michael.Youso@FBFS.com]
Sent: Thursday, June 25, 2009 8:43 PM
To: Comments, Public
Subject: Why should the government regulate products that provide a guarantee to the purchaser?

Legislators and regulators,

With 32 years in the business, I have seen the need for government oversight to deal with the renegades who come and go in the insurance and investment world. I seriously question the need to regulate products and professionals who sell guaranteed products. Please keep out of the non variable side of our business.

Thanks,

Mike

Michael J. Youso
Agency Manager
Location: 1660 N. Tyler Rd.
Wichita, KS 67212
Office: (316)239-6856
Cell: (316)680-8758
Fax: (316)440-4918

From: przietlow@msn.com [mailto:przietlow@msn.com]
Sent: Tuesday, June 23, 2009 11:11 AM
To: Comments, Public
Subject: Regulatory Notice 09-25

Paul Zietlow
8000 Plum Dr
Urbandale, IA 50322-8311

June 23, 2009

FINRA - Financial Industry Regulatory Authority

FINRA - Financial Industry Regulatory Authority:

I strongly object to expanding FINRA's suitability obligations to recommendations that do not involve securities. This will not help the consumer. They are already confused with attempts to protect them with regulations.

People who promote unsuitable sales and engage in misleading sales practices should be aggressively prosecuted and subject to meaningful sanctions. However, FINRA does not have jurisdiction over products and services which are not securities, and neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities transactions.

The strength of the USA is that individuals are endowed with certain unalienable rights including life, liberty, and the pursuit of happiness (property). Our government reulations have grown so much as to hinder the individual's ability to acquire property and ultimately a lifetime income generated from that property. Regulations like notice 09-25 by FINRA add to the hinderance.

Insurance products are already subject to comprehensive regulation at the state level by state insurance departments and other state regulators. The application of FINRA rules to these products could result in conflicting and confusing regulatory requirements which will detract from the goal of consumer protection.

I urge you not to expand FINRA's suitability obligations to include recommendations that do not involve securities. Thank you.

Sincerely,

Paul Zietlow
515-238-1736