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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2010 - * 039

Amendment No. (req. for Amendments *)

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☒	Amendment * ☐	Withdrawal ☐	Section 19(b)(2) * ☒	Section 19(b)(3)(A) * ☐	Section 19(b)(3)(B) * ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action * ☐	Date Expires * 	☐ 19b-4(f)(1)	☐ 19b-4(f)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
☐Exhibit 3 Sent As Paper Document
☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name *	James	Last Name *	Wrona
Title *	Associate Vice President and Associate General Counsel		
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Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/30/2010

By Stephanie Dumont

(Name *)

Senior Vice President and Director of Capital Markets
Policy

(Title *)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

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Exhibit 1 - Notice of Proposed Rule Change (required)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit 3 - Form, Report, or Questionnaire

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document
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Exhibit 4 - Marked Copies

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

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Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

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Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt FINRA Rule 2111 (Suitability) and FINRA Rule 2090 (Know Your Customer) as part of the Consolidated FINRA Rulebook. The proposed rules are based in large part on NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related Interpretative Materials (“IMs”) and Incorporated NYSE Rule 405(1) (Diligence as to Accounts), respectively. As further detailed herein, the proposed rule change would delete those NASD and Incorporated NYSE rules and related NASD IMs and Incorporated NYSE Rule Interpretations.

The text of the proposed rule change is attached as Exhibit 5.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD and Incorporated NYSE rules and interpretations will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 11, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published

¹ 15 U.S.C. 78s(b)(1).

no later than 90 days following Commission approval. The implementation date will be no later than 240 days following Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),² FINRA is proposing to adopt FINRA Rule 2111 (Suitability) and FINRA Rule 2090 (Know Your Customer). The rules are based in large part on NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related IMs and NYSE Rule 405(1) (Diligence as to Accounts), respectively.³ As further discussed below, the proposed rule change would delete NASD Rule 2310, IM-2310-1 (Possible Application of SEC Rules 15g-1 through 15g-9), IM-2310-2 (Fair Dealing with Customers), IM-2310-3 (Suitability Obligations to Institutional Customers), NYSE Rule 405(1) through (3) (including NYSE Supplementary Material 405.10 through .30), and NYSE Rule Interpretations 405/01 through /04.⁴

² The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

³ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

⁴ FINRA notes that NYSE Rule 405(4) was eliminated from the Transitional Rulebook on June 14, 2010 pursuant to a previous rule filing. See Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010)

The suitability and “know your customer” obligations are critical to ensuring investor protection and fair dealing with customers. Under the proposal, the core features of these obligations set forth in NASD Rule 2310 and NYSE Rule 405(1) remain intact. FINRA, however, proposes modifications to both rules to strengthen and clarify them. In Regulatory Notice 09-25 (May 2009), FINRA sought comment on the proposal. The current filing includes additional proposed changes that respond to comments.

Item 5 of this filing provides a detailed discussion of the proposed modifications, comments FINRA received, and FINRA’s responses thereto. In brief, however, the proposed new suitability rule, designated FINRA Rule 2111, would require a broker-dealer or associated person to have “a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer....”⁵ This assessment must be “based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to, 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 customer may disclose to the member or associated person in connection with such recommendation.”⁶

(Order Approving File No. SR-FINRA-2010-005); see also Regulatory Notice 10-21 (April 2010).

⁵ See Proposed FINRA Rule 2111(a).

⁶ See Proposed FINRA Rule 2111(a). As discussed infra at Item 5 of this filing, FINRA modified various aspects of the proposed information-gathering requirements in response to comments.

The proposal would add the term “strategy” to the rule text so that the rule explicitly covers a recommended strategy. Although FINRA generally intends the term “strategy” to be interpreted broadly, the proposed supplementary material would exclude the following communications from the coverage of Rule 2111 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities:

- General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimating future retirement income needs, and (v) assessment of a customer’s investment profile;
- Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;
- Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor’s assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an “investment analysis tool” covered by NASD IM-2210-6;⁷ and
- Interactive investment materials that incorporate the above.⁸

The proposal also would codify interpretations of the three main suitability obligations, listed below:

⁷ FINRA is proposing to adopt NASD IM-2210-6 as FINRA Rule 2214, without material change. See Regulatory Notice 09-55 (September 2009).

⁸ See Proposed FINRA Rule 2111.02. As discussed infra at Item 5 of this filing, FINRA included this exception to the rule’s coverage in response to comments.

- Reasonable basis (members must have a reasonable basis to believe, based on adequate due diligence, that a recommendation is suitable for at least some investors);
- Customer specific (members must have reasonable grounds to believe a recommendation is suitable for the particular investor at issue); and
- Quantitative (members must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive).⁹

In addition, the proposal would modify the institutional-customer exemption by focusing on whether there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies,¹⁰ and is exercising independent judgment in evaluating recommendations.¹¹ The proposal, moreover, would require institutional customers to affirmatively indicate that they are exercising independent

⁹ See Proposed FINRA Rule 2111.03.

¹⁰ See Proposed FINRA Rule 2111(b). The requirement in Proposed FINRA Rule 2111(b) that the firm or associated person have a reasonable basis to believe that “the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies” comes from current IM-2310-3. As FINRA explained in that IM, “[i]n some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk.” FINRA further stated that, “[i]f a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member’s customer-specific obligations under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer.” FINRA also stated that “the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent decision.”

¹¹ See Proposed FINRA Rule 2111(b).

judgment.¹² The proposal also would harmonize the definition of institutional customer in the suitability rule with the more common definition of “institutional account” in NASD Rule 3110(c)(4).¹³

Finally, the suitability proposal would eliminate or modify a number of the IMs associated with the existing suitability rule because they are no longer necessary. Some of the discussions are not needed because of the changes to the scope of the suitability rule proposed herein (e.g., the proposed rule text would capture “strategies” currently referenced in IM-2310-3).¹⁴ Others are redundant because they identify conduct explicitly covered by other rules (e.g., inappropriate sale of penny stocks referenced in IM-2310-1 is covered by the SEC’s penny stock rules,¹⁵ fraudulent conduct identified in IM-2310-2 is covered by the FINRA and SEC anti-fraud provisions¹⁶).

Still other IM discussions have been incorporated in some form into the proposed rule or its supplementary material. For example, the exemption in IM-2310-3 dealing with institutional customers is modified and moved to the text of proposed FINRA Rule

¹² See Proposed FINRA Rule 2111(b). As discussed infra at Item 5 of this filing, FINRA substituted this requirement for another in response to comments. FINRA emphasizes that the institutional-customer exemption applies only if both parts of the two-part test are met: (1) there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, in general and with regard to particular transactions and investment strategies, and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating recommendations.

¹³ See Proposed FINRA Rule 2111(b). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c), without material change. See Regulatory Notice 08-25 (May 2008).

¹⁴ See Proposed Rule 2111(a).

¹⁵ See SEA Rule 15g-1 through 15g-9.

¹⁶ See Section 10(b) of the Act; FINRA Rule 2020.

2111.¹⁷ In addition, the explication of the three main suitability obligations, currently located in IM-2310-2 and IM-2310-3, are consolidated into a single discussion in the proposed rule's supplementary material.¹⁸ Similarly, the proposed rule's supplementary material includes a modified form of the current requirement in IM-2310-2 that a member refrain from recommending purchases beyond a customer's capability.¹⁹ The supplementary material also retains the discussion in IM-2310-2 and IM-2310-3 regarding the suitability rule's significance in promoting fair dealing with customers and ethical sales practices.²⁰

The only type of misconduct identified in the IMs that is neither explicitly covered by other rules nor incorporated in some form into the proposed new suitability rule is unauthorized trading, currently discussed in IM-2310-2. However, it is well-settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010 (previously NASD Rule 2110).²¹ Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way

¹⁷ See Proposed Rule 2111(a).

¹⁸ See Proposed Rule 2111.03.

¹⁹ See Proposed Rule 2111.04.

²⁰ See Proposed Rule 2111.01.

²¹ See, e.g., Robert L. Gardner, 52 S.E.C. 343, 344 n.1 (1995), aff'd, 89 F.3d 845 (9th Cir. 1996) (table format); Keith L. DeSanto, 52 S.E.C. 316, 317 n.1 (1995), aff'd, 101 F.3d 108 (2d Cir. 1996) (table format); Jonathan G. Ornstein, 51 S.E.C. 135, 137 (1992); Dep't of Enforcement v. Griffith, No. C01040025, 2006 NASD Discip. LEXIS 30, at *11-12 (NAC Dec. 29, 2006); Dep't of Enforcement v. Puma, No. C10000122, 2003 NASD Discip. LEXIS 22, at *12 n.6 (NAC Aug. 11, 2003).

alters the longstanding view that unauthorized trading is serious misconduct and clearly violates FINRA's rules.

The proposed FINRA "Know Your Customer" obligation, designated FINRA Rule 2090, captures the main ethical standard of NYSE Rule 405(1). As proposed, broker-dealers would be required to use "due diligence," in regard to the opening and maintenance of every account, in order to know the essential facts concerning every customer.²² The obligation would arise at the beginning of the customer/broker relationship, independent of whether the broker has made a recommendation. The proposed supplementary material would define "essential facts" as those "required to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules."²³

The proposal would eliminate the requirement in NYSE Rule 405(1) to learn the essential facts relative to "every order." FINRA proposes eliminating the "every order" language because of the application of numerous, specific order-handling rules.²⁴ In addition, the reasonable-basis obligation under the suitability rule requires broker-dealers

²² See Proposed FINRA Rule 2090.

²³ See Proposed FINRA Rule 2090.01. As discussed *infra* at Item 5 of this filing, FINRA changed the explanation of "essential facts" in response to comments.

²⁴ See, e.g., SEC Regulation NMS (National Market System), 17 CFR 242.600-242.612; FINRA Rule 7400 Series (Order Audit Trail System); NASD Rule 2320 (Best Execution and Interpositioning) [proposed FINRA Rule 5310; see Regulatory Notice 08-80 (December 2008)]; NASD Rule 2400 Series (Commissions, Mark-Ups and Charges); NASD IM-2110-2 (Trading Ahead of Customer Limit Order) [proposed FINRA Rule 5320; see SR-FINRA-2009-090]; and IM-2110-3 (Front Running Policy) [proposed FINRA Rule 5270; see Regulatory Notice 08-83 (December 2008)].

and associated persons to perform adequate due diligence so that they “know” the securities and strategies they recommend.

FINRA also is proposing to delete NYSE Rule 405(2) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretation 405/01 through /04 because they generally are duplicative of other rules, regulations, or laws. For instance, NYSE Rule 405(2) requires firms to supervise all accounts handled by registered representatives. That provision is redundant because NASD Rule 3010 requires firms to supervise their registered representatives.²⁵

NYSE Rule 405(3) generally requires persons designated by the member to be informed of the essential facts relative to the customer and to the nature of the proposed account and to then approve the opening of the account. A number of other existing and proposed FINRA rules do or will create substantially similar obligations. Proposed FINRA Rule 2090, discussed herein, would require members to know the essential facts as to each customer. NASD Rule 3110(c)(1)(C) requires the signature of the member, partner, officer or manager who accepts the account.²⁶

A firm’s account-opening obligations also are impacted by FINRA Rule 3310, which requires a firm to have procedures reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations. One of those regulations

²⁵ FINRA is proposing to adopt NASD Rule 3010 as FINRA Rule 3110, subject to certain amendments. See Regulatory Notice 08-24 (May 2008).

²⁶ FINRA is proposing to adopt NASD Rule 3110(c)(1)(C) as FINRA Rule 4512(a)(1)(C), subject to certain amendments. See Regulatory Notice 08-25 (May 2008). Proposed FINRA Rule 4512(a)(1)(C) would clarify that members maintain the signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member’s policies and procedures for acceptance of accounts.

requires the firm to verify the identity of a customer opening a new account.²⁷ Another requires due diligence that would enable the firm to evaluate the risk of each customer and to determine if transactions by the customer could be suspicious and need to be reported.²⁸ Moreover, before certain customers can purchase certain types of investment products (such as options, futures or penny stocks) or engage in certain strategies (such as day trading), the firm must explicitly approve their accounts for such activity.²⁹

NYSE Supplementary Material 405.10 is redundant of other FINRA proposed and existing requirements, and the cross references provided in .20 and .30 are no longer necessary. NYSE Supplementary Material 405.10 generally discusses the requirements that firms know their customers and understand the authority of third-parties to act on behalf of customers that are legal entities. Proposed FINRA Rule 2090 and proposed FINRA Supplementary Material 2090.01, discussed herein, would require firms to know the essential facts as to each customer. NYSE Supplementary Material 405.10 also discusses certain documentation obligations regarding persons authorized to act on behalf of various types of customers that are legal entities. NASD Rule 3110(c) (Customer Account Information), however, similarly requires firms to maintain a record identifying the person(s) authorized to transact business on behalf of a customer that is a legal

²⁷ See 31 CFR 103.122.

²⁸ See 31 CFR 103.19.

²⁹ See, e.g., SEA Rule 15g-1 through 15g-9 (Penny Stock Rules); FINRA Rule 2360 (Options); FINRA Rule 2370 (Security Futures); FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts).

entity.³⁰ NYSE Supplementary Material 405.20 and .30 provide cross references to NYSE Rule 382 (Carrying Agreements) and NYSE Rule 414 (Index and Currency Warrants), respectively, which are no longer necessary or appropriate for inclusion in proposed FINRA Rule 2090.

The NYSE Rule Interpretations also are redundant. NYSE Rule Interpretations 405/01 (Credit Reference—Business Background) and /02 (Approval of New Accounts/Branch Offices) recommend that the credit references and business backgrounds of a new account be cleared by a person other than the registered representative opening the account and require a designated person to ultimately approve a new account. These obligations are substantially similar to the requirements in NASD Rule 3110(c)(1)(C) and FINRA Rule 3310, discussed above.

NYSE Rule Interpretation 405/03 (Fictitious Orders) states that firm “personnel opening accounts and/or accepting orders for new or existing accounts should make every effort to verify the legitimacy of the account and the validity of every order.” The interpretation contemplates knowing the customer behind the order as part of the process of ensuring that the order is bona fide. Proposed FINRA Rule 2090 and FINRA Rule 3310 together place similar requirements on firms to know their customers.

To the extent NYSE Rule Interpretation 405/03 seeks to guard against the use of fictitious trades as a means of manipulating markets, various FINRA rules cover such activities. FINRA Rule 5210 (Publication of Transactions and Quotations) prohibits members from publishing or circulating or causing to publish or circulate, any notice,

³⁰ As noted previously, FINRA is proposing to adopt NASD Rule 3110(c) as FINRA Rule 4512 (Customer Account Information), subject to certain amendments. See Regulatory Notice 08-25 (May 2008).

circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of, or purports to quote the bid or asked price for, any security unless such member believes that such transaction or quotation was bona fide. FINRA Rule 5220 (Offers at Stated Prices) prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell at such price and under such conditions as are stated at the time of such offer to buy or sell. Moreover, the use of fictitious transactions by a member or associated person to manipulate the market would violate FINRA's just and equitable principles of trade (FINRA Rule 2010) and anti-fraud provision (FINRA Rule 2020).³¹

NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) discusses requirements regarding transactions initiated "on the Floor" for an account in which a member organization has an interest. The interpretation is directed to the NYSE marketplace. Moreover, Section 11(a) of the Act and the rules thereunder address trading by members of exchanges, brokers and dealers. For the reasons discussed above, FINRA believes NYSE Rule 405(1) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretations 405/01 through /04 are no longer necessary. They will be eliminated from the current FINRA rulebook upon Commission approval and implementation by FINRA of this current proposed rule change.

³¹ See, e.g., Terrance Yoshikawa, Securities Exchange Act Release No. 53731, 2006 SEC LEXIS 948 (April 26, 2006) (upholding finding that president of broker-dealer violated just and equitable principles of trade and anti-fraud provisions by fraudulently entering orders designed to manipulate the price of securities).

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 240 days following Commission approval.

(b) Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³² which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it requires firms and associated persons to know, deal fairly with, and make only suitable recommendations to customers.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As noted above, the proposed rule change was published for comment in Regulatory Notice 09-25 (May 2009). A copy of the Notice is attached as Exhibit 2a. FINRA received 2,083 comment letters, 389 of which were individualized letters and 1,694 of which were form letters. A copy of the index to comment letters received in response to the Notice is attached as Exhibit 2b, and copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

³² 15 U.S.C. 78o-3(b)(6).

Comments came from broker-dealers, insurers, investment advisers, academics, industry associations, investor-protection groups, lawyers in private practice, and a state government agency. Commenters had myriad different views regarding nearly every aspect of the proposal. A discussion of those comments and FINRA's responses thereto follows.

SUITABILITY (Proposed FINRA Rule 2111)

Fiduciary Standard

Although FINRA did not request comment on whether fiduciary obligations should influence the suitability proposal, more than a thousand commenters raised issues involving fiduciary obligations. A brief discussion of these issues is thus warranted.

▪ Comments

One commenter suggested that FINRA should consider a fiduciary duty standard in addition to a suitability standard.³³ Numerous other commenters argued that FINRA should not move forward with proposed changes to the suitability rule until after policymakers (e.g., Congress, the SEC, and/or FINRA) determine whether broker-dealers must comply with fiduciary obligations.³⁴ One commenter further posited that it would

³³ Rex A. Staples, General Counsel for the North American Securities Administrators Association, July 13, 2009 ("NASAA Letter").

³⁴ See Joan Hinchman, Executive Director, President, and CEO of the National Society of Compliance Professionals Inc., June 29, 2009 ("NSCP Letter"); Clifford Kirsch and Eric Arnold, Sutherland Asbill & Brennan LLP for the Committee of Annuity Insurers, June 29, 2009 ("Committee of Annuity Insurers Letter"). In addition, 435 individuals and entities made this point, among others, using one form letter ("Form Letter Type A") and 1,197 individuals did so using another form letter ("Form Letter Type B").

be easier for firms to implement a single, integrated change to customer care standards adopted at one time.³⁵

▪ **FINRA's Response**

FINRA notes that the application of a suitability standard is not inconsistent with a fiduciary duty standard. In this regard, the SEC emphasized in one release that "investment advisers under the Advisers Act," who have fiduciary duties, "owe their clients the duty to provide only suitable investment advice.... To fulfill this suitability obligation, an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives."³⁶ In another release, the SEC similarly explained that "[i]nvestment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable investment advice."³⁷

Suitability obligations constitute a material part of a fiduciary standard in the context of investment advice and recommendations. It also is important to note that case law makes clear that, under FINRA's suitability rule, "a broker's recommendations must be consistent with his customers' best interests."³⁸ Thus, the suitability obligations set

³⁵ See NSCP Letter, supra note 34.

³⁶ Release Nos. IC-22579, IA-1623, S7-24-95, 1997 SEC LEXIS 673, at *26 (Mar. 24, 1997) (Status of Investment Advisory Programs under the Investment Company Act of 1940). See also Shearson, Hammill & Co., 42 S.E.C. 811 (1965) (finding willful violations of Section 206 of the Advisers Act when investment adviser made unsuitable recommendations).

³⁷ Investment Advisers Act Release No. 1406, 1994 SEC LEXIS 797, at *4 (Mar. 16, 1994) (Suitability of Investment Advice Provided by Investment Advisers).

³⁸ Raghavan Sathianathan, Securities Exchange Act Release No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006), aff'd, 304 F. App'x 883 (D.C. Cir. 2008); see also Dane S. Faber, Securities Exchange Act Release No. 49216, 2004 SEC

forth in proposed Rule 2111 would not be inconsistent with the addition of a fiduciary duty at some future date.³⁹

Scope of the Suitability Rule

FINRA sought comment on two main issues potentially impacting the scope of the suitability rule: whether to add the term “strategy” to the rule language and whether to broaden the rule so that it reaches non-securities products. The second issue was not highlighted in the rule text. Rather, it was raised in a discussion in the Notice seeking comment.

▪ **Strategies**

The issue of whether the suitability rule applies to recommended strategies has been addressed previously. SEC and FINRA discussions in IMs, releases, and notices, as well as in some decisions, indicate that the current suitability rule applies to certain types of recommended strategies.

NASD IM-2310-3 (Suitability Obligations to Institutional Customers) provides in its “Preliminary Statement” that broker-dealers’ “responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having

LEXIS 277, at *23-24 (Feb. 10, 2004) (explaining that a broker’s recommendations “must be consistent with his customer’s best interests”); Daniel R. Howard, 55 S.E.C. 1096, 1099-1100 (2002) (same), aff’d, 77 F. App’x 2 (1st Cir. 2003).

³⁹ FINRA notes as well that the suitability rule is only one of many FINRA business-conduct rules with which broker-dealers and their associated persons must comply. Many FINRA rules prohibit, limit, or require disclosure of conflicts of interest. Broker-dealers and their associated persons, for instance, must comply with just and equitable principles of trade, standards for communications with the public, order-handling requirements, fair-pricing standards, and various disclosure obligations regarding research, trading, compensation, margin, and certain sales and distribution activity, among others, in addition to suitability obligations.

reasonable grounds for believing the recommendation is suitable for the customer to whom it is made.” Similarly, Notices to Members have stated that broker-dealers' responsibilities under Rule 2310 “include having a reasonable basis for recommending a particular security or strategy.”⁴⁰ Moreover, when the SEC published FINRA’s Online Suitability Policy Statement, Notice to Members 01-23 (Apr. 2001) (“NTM 01-23”), in the Federal Register, the Commission included the following statement in the release: “The Commission notes that although [NTM] 01-23 does not expressly discuss electronic communications that recommend investment strategies, the NASD suitability rule continues to apply to the recommendation of investment strategies, whether that recommendation is made via electronic communication or otherwise.”⁴¹

A number of SEC decisions also support application of the suitability rule to recommended strategies. The case often cited as standing for such a proposition is F.J. Kaufman & Co., 50 S.E.C. 164 (1989), in which the SEC found that the respondent violated NASD Rule 2310 by recommending an unsuitable strategy to customers. A number of Commission decisions issued after Kaufman also lend support for applying the suitability rule to recommended strategies in certain situations. Many of these cases

⁴⁰ See Notice to Members 96-32, 1996 NASD LEXIS 51, at *2 (May 1996); see also Notice to Members 05-68, 2005 NASD LEXIS 44, at *11 (Oct. 2005) (stating that members and their associated persons “should perform a careful analysis to determine whether liquefying home equity is a suitable strategy for an investor”); Notice to Members 04-89, 2004 NASD LEXIS 76, at *7 (Dec. 2004) (same).

⁴¹ See Securities Exchange Act Release No. 44178, 2001 SEC LEXIS 731, at *28-29 (April 12, 2001), 66 FR 20697, 20702 (April 24, 2001) (Notice of Filing and Immediate Effectiveness of FINRA’s Online Suitability Policy Statement).

involved recommendations to purchase securities on margin (which can be viewed as a strategy).⁴²

The proposed suitability rule explicitly covers recommended strategies. The commenters' views on the inclusion of the term were varied.

O Comments

A number of commenters supported the addition of the term to the rule text.⁴³ Some commenters requested that FINRA make clear in the supplementary material that the term “strategy” should be interpreted broadly and include recommendations to hold an investment.⁴⁴ Some of these commenters also believed that firms should have an affirmative duty to review portfolios that are transferred into a firm and that the lack of a

⁴² See, e.g., Jack H. Stein, Securities Exchange Act Release No. 47335, 2003 SEC LEXIS 338, at *15 (Feb. 10, 2003); Justine S. Fischer, 53 S.E.C. 734 (1998); Stephen T. Rangen, 52 S.E.C. 1304, 1307-1308 (1997); Arthur J. Lewis, 50 S.E.C. 747, 748-50 (1991).

⁴³ See Barbara Black, Director of the Corporate Law Center of the University of Cincinnati College of Law, and Jill I. Gross, Director of the Investor Rights Clinic of the Pace University School of Law (“Corporate Law Center & Investor Rights Clinic”), June 29, 2009; Peter J. Harrington, Christine Lazaro & Lisa A. Catalano, Securities Arbitration Clinic at St. John’s University, June 25, 2009 (“St. John’s Letter”); William A. Jacobson and Sang Joon Kim, Cornell Securities Law Clinic, June 27, 2009 (“Cornell Letter”); Sarah McCafferty, Vice President and Chief compliance Officer at T.RowePrice, June 29, 2009 (“T.RowePrice Letter”); Peter J. Mougey and Kristian P. Kraszewski, Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor P.A., June 29, 2009 (“Mougey and Kraszewski Letter”); Daniel C. Rome, General Counsel of Taurus Compliance Consulting LLC, June 29, 2009 (“Taurus Letter”).

⁴⁴ See Cornell Letter, supra note 43; Mougey and Kraszewski Letter, supra note 43; St. John’s Letter, supra note 43.

recommendation to make any changes to the portfolio effectively constitutes an implicit recommendation to retain what is in the account.⁴⁵

Other commenters supported the inclusion of the term strategy but asked FINRA to clarify that the suitability rule would apply only to recommended “strategies resulting in the purchase, sale or exchange of a security or securities”⁴⁶ or where there is a “reasonable nexus between the recommended investment strategy and a securities transaction in furtherance of the recommended strategy.”⁴⁷ Other commenters stated that FINRA should define or clarify the term “strategy.”⁴⁸ One of these commenters believed that, without a definition, there would be confusion among firms and FINRA examiners regarding whether all asset allocation programs and “buy and hold” recommendations should be viewed as strategies.⁴⁹

⁴⁵ See Mougey and Kraszewski Letter, supra note 43; St. John’s Letter, supra note 43.

⁴⁶ See Bari Havlik, SVP and Chief Compliance Officer for Charles Schwab & Co., June 29, 2009 (“Charles Schwab Letter”).

⁴⁷ See Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, June 29, 2000 (“SIFMA Letter”); NSCP Letter, supra note 34.

⁴⁸ See NSCP Letter, supra note 34. A number of commenters stated that FINRA should eliminate the term strategy from the rule but argued that, if FINRA continues to use it, FINRA needed to clarify what the term means. See Committee of Annuity Insurers Letter, supra note 34; James Livingston, President and CEO of National Planning Holdings, Inc., June 29, 2009 (“National Planning Holdings”); Stephanie L. Brown, Managing Director and General Counsel for LPL Financial Corporation, June 29, 2009 (“LPL Letter”).

⁴⁹ See NSCP Letter, supra note 34.

A number of commenters opposed the inclusion of the term “strategy.”⁵⁰

However, one of these commenters stated that, if FINRA includes the term in the final proposal, FINRA should except from the rule’s coverage any information determined to be “investment education” under the Employee Retirement Income Security Act (“ERISA”).⁵¹

o FINRA’s Response

FINRA agrees that the term “strategy” should be included in the rule language and that, in general, it should be interpreted broadly. For instance, FINRA rejects the contention that the rule should only cover a recommended strategy if it results in a transaction. As with the current suitability rule, application of the proposed rule would be triggered when the broker-dealer or associated person recommends the security or strategy regardless of whether the recommendation results in a transaction.⁵² The term “strategy,” moreover, would cover explicit recommendations to hold a security or securities. The rule recognizes that customers may rely on members’ and associated persons’ investment expertise and knowledge, and it is thus appropriate to hold members and associated persons responsible for the recommendations that they make to customers,

⁵⁰ See LPL Letter, supra note 48; Committee of Annuity Insurers Letter, supra note 34; Clifford E. Kirsch, Sutherland Asbill & Brennan LLP on behalf of John Hancock Life Insurance Co., MetLife Inc., and the Prudential Insurance Co. of America, June 29, 2009 (“Hancock, MetLife and Prudential Letter”); National Planning Holdings, supra note 48.

⁵¹ See Hancock, MetLife and Prudential Letter, supra note 50 (citing 29 CFR 2509.96-1(d)).

⁵² See, e.g., Dist. Bus. Conduct Comm. v. Nickles, Complaint No. C8A910051, 1992 NASD Discip. LEXIS 28, at *18 (NBCC Oct. 19, 1992) (holding that suitability rule “applies not only to transactions that registered persons effect for their clients, but also to any recommendations that a registered person makes to his or her client”).

regardless of whether those recommendations result in transactions or generate transaction-based compensation.

In regard to the comment concerning implicit recommendations on portfolios transferred to a firm, FINRA notes that nothing in the current rule proposal is intended to change the longstanding application of the suitability rule on a recommendation-by-recommendation basis. In limited circumstances, FINRA and the SEC have recognized that implicit recommendations can trigger suitability obligations. For example, FINRA and the SEC have held that associated persons who effect transactions on a customer's behalf without informing the customer have implicitly recommended those transactions, thereby triggering application of the suitability rule.⁵³ The rule proposal is not intended to broaden the scope of implicit recommendations.

As discussed in Item 3 of this rule filing, FINRA also proposes to explicitly exempt from the rule's coverage certain categories of educational material as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities. FINRA believes that it is important to encourage broker-dealers and associated persons to freely provide educational material and services to customers. As one commenter explained, the U.S. Department of Labor provided a similar exemption from some requirements under ERISA.⁵⁴

⁵³ See, e.g., Rafael Pinchas, 54 S.E.C. 331, 341 n.22 (1999) ("Transactions that were not specifically authorized by a client but were executed on the client's behalf are considered to have been implicitly recommended within the meaning of the NASD rules."); Paul C. Kettler, 51 S.E.C. 30, 32 n.11 (1992) (stating that transactions broker effects for a discretionary account are implicitly recommended).

⁵⁴ See Hancock, MetLife and Prudential Letter, supra note 50 (citing 29 CFR 2509.96-1(d)).

▪ **Non-Securities Products**

The current suitability rule and the proposed new suitability rule cover recommendations involving securities. In the Notice seeking comment, however, FINRA asked whether the suitability rule should cover recommendations of non-securities products made in connection with the firm's business. This issue generated the greatest number of comments, most of which were against extending the rule's reach.

o **Comments**

Some commenters favored broadening the suitability rule so that it covers non-securities products.⁵⁵ One commenter stated that the expansion was needed because broker-dealers market more than just securities and oftentimes customers do not understand that they may be afforded less protection when purchasing non-securities products.⁵⁶ Another commenter stated that it would be unreasonable for a firm to allow a non-securities recommendation that was inconsistent with a customer's suitability profile.⁵⁷ Yet another commenter believed that broker-dealers implicitly already have similar obligations but favored explicitly applying the suitability rule to non-securities products.⁵⁸ According to this commenter, broker-dealers 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

⁵⁵ See Mougey and Kraszewski Letter, supra note 43; Taurus Letter, supra note 43.

⁵⁶ See Mougey and Kraszewski Letter, supra note 43.

⁵⁷ See Taurus Letter, supra note 43.

⁵⁸ See Corporate Law Center & Investor Rights Clinic, supra note 43.

strategy to their customers.⁵⁹ This commenter argued that the proposal was not an expansion of broker-dealer obligations; rather the proposal would make explicit what FINRA's rules have consistently required from broker-dealers and associated persons.⁶⁰ The commenter supported a revision of proposed Rule 2111 to incorporate an explicit suitability obligation that is not limited to securities.⁶¹

The vast majority of commenters, however, were against applying the suitability rule to non-securities products.⁶² Some argued that FINRA did not have jurisdiction over

⁵⁹ See Corporate Law Center & Investor Rights Clinic, supra note 43.

⁶⁰ See Corporate Law Center & Investor Rights Clinic, supra note 43.

⁶¹ See Corporate Law Center & Investor Rights Clinic, supra note 43.

⁶² See, e.g., Michael Berenson, Morgan, Lewis & Bockius LLP on behalf of American Equity Life Insurance Company, June 23, 2009 ("AELIC Letter"); Charles Schwab Letter, supra note 46; Committee of Annuity Insurers Letter, supra note 34; John M. Damgard, President of the Futures Industry Association, June 29, 2009 ("FIA Letter"); Form Letter Type A, supra note 34; Form Letter Type B, supra note 34; Hancock, MetLife and Prudential Letter, supra note 50; James L. Harding, James L. Harding & Associates, Inc., July 1, 2009 ("Harding Letter"); Mike Hogan, President and CEO of FOLIOfn Investments, Inc., June 29, 2009 ("FOLIOfn Letter"); Ronald C. Long, Director of Regulatory Affairs for Wells Fargo Advisors, LLC, June 29, 2009 ("Wells Fargo Letter"); LPL Letter, supra note 50; John S. Markle, Deputy General Counsel for TD Ameritrade, June 29, 2009 ("TD Ameritrade Letter"); NSCP Letter, supra note 34; Lisa Roth, National Ass'n of Independent Broker-Dealers, Inc., June 29, 2009 ("NAIBD Letter"); Thomas W. Sexton, Senior Vice President & General Counsel for the National Futures Association, June 29, 2009 ("NFA Letter"), SIFMA Letter, supra note 47; T.RowePrice Letter, supra note 43; Robert R Carter and David A Stertz, Association for Advanced Life Underwriting, June 29, 2009 ("AALU Letter"); Alan J Cyr, Cyr & Cyr Insurance Services, June 26, 2009 ("Cyr & Cyr Insurance Services Letter"); F. John Millette, IMG Financial Group, June 23, 2009 ("IMG Financial Group Letter"); Neal Nakagiri, NPB Financial Group, LLC, June 2, 2009 ("NPB Financial Group Letter"); Richard C. Orvis, Principal Life Insurance Co., June 23, 2009 ("Principal Life Insurance Co. Letter").

non-securities products.⁶³ Some argued against the expansion because they claimed there is no evidence of abuse resulting from recommendations involving non-securities products.⁶⁴ Some commenters stated that such action is unnecessary because the states and federal regulators, and in some instances other self-regulatory organizations, already regulate many non-securities products and services (e.g., insurance, real estate, investment advisers, futures products, etc.).⁶⁵ Others claimed that FINRA was ill-suited to regulate non-securities products because it has no expertise outside securities issues.⁶⁶ A few argued that adoption of an enhanced suitability rule would create confusion regarding whether a recommendation is made “in connection with a firm’s business.”⁶⁷

o FINRA’s Response

With the possible exception of potentially duplicative regulation, which FINRA believes could be addressed in any further expansion of the reach of the rule, FINRA does not agree with the commenters’ reasoning against extending the scope of the

⁶³ See, e.g., Committee of Annuity Insurers Letter, supra note 34; FOLIOfn Letter, supra note 62; Form Letter Type A, supra note 34; Form Letter Type B, supra note 34; Hancock, MetLife and Prudential Letter, supra note 50; LPL Letter, supra note 48; NSCP Letter, supra note 34; T.RowePrice Letter, supra note 43.

⁶⁴ See, e.g., AALU Letter, supra note 62; AELIC Letter, supra note 62; Cyr & Cyr Insurance Services Letter, supra note 59; Principal Life Insurance Co. Letter, supra note 59.

⁶⁵ See, e.g., AELIC Letter, supra note 62; Committee of Annuity Insurers Letter, supra note 34; FIA Letter, supra note 62; Form Letter Type A, supra note 34; Form Letter Type B, supra note 34; Hancock, MetLife and Prudential Letter, supra note 50; Michael T. McRaith, Illinois Department of Insurance Letter, June 29, 2009; NAIBD Letter, supra note 62; NFA Letter, supra note 62; NSCP Letter, supra note 34; SIFMA Letter, supra note 47.

⁶⁶ See, e.g., AALU Letter, supra note 62; Committee of Annuity Insurers Letter, supra note 34; Wells Fargo Letter, supra note 62.

⁶⁷ See, e.g., AELIC Letter, supra note 62.

suitability rule. FINRA acknowledges, however, that future developments in regulatory restructuring could impact any such proposal. FINRA emphasizes, moreover, that the proposed new suitability rule (including the explicit coverage of recommended strategies and expanded list of the types of information that members must seek to gather and analyze) and the proposed “Know Your Customer” rule together provide enhanced protection to investors. Consequently, FINRA will not include explicit references to non-securities products in the rule at this time.

▪ **Clarification of the Term “Recommendation”**

Consistent with the current suitability rule, the proposed new rule does not define the term “recommendation.” FINRA received a number of comments regarding the term.

o **Comments**

Some commenters asked FINRA to define the term “recommendation.”⁶⁸ One commenter believed that FINRA’s failure to define “recommended transaction” will make it difficult for firms to distinguish recommended transactions from “discussed” and/or “reviewed” transactions.⁶⁹ This commenter stated that the “current 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.’”⁷⁰ The commenter believes that “the discussion in NTM 01-23 provides a good foundation upon which FINRA can base the definition.”⁷¹ Another commenter

⁶⁸ See Barry D. Estell, Attorney at Law, June 24, 2009 (“Estell Letter”); FOLIOfn Letter, supra note 62; Mougey and Kraszewski Letter, supra note 43.

⁶⁹ See FOLIOfn Letter, supra note 62.

⁷⁰ See FOLIOfn Letter, supra note 62.

⁷¹ See FOLIOfn Letter, supra note 62.

asked that FINRA reaffirm the principles discussed in NTM 01-23 regarding the term “recommendation.”⁷² Other commenters argued that the term should be defined to include recommendations to hold securities.⁷³

o FINRA’s Response

The determination of the existence of a recommendation has always been based on the facts and circumstances of the particular case and, therefore, the fact of such action having taken place is not susceptible to a bright line definition.⁷⁴ As two commenters noted, however, FINRA announced several guiding principles in NTM 01-23 regarding whether a communication constitutes a recommendation. In general, those guiding principles remain relevant.

For instance, FINRA stated that a communication’s content, context, and presentation are important aspects of the inquiry. In addition, the more individually tailored the communication is to a particular customer or customers about a specific security or strategy, the more likely the communication will be viewed as a recommendation. FINRA also explained that a series of actions that may not constitute recommendations when viewed individually may amount to a recommendation when considered in the aggregate. FINRA stated, moreover, that it makes no difference whether the communication was initiated by a person or a computer software program.

⁷² TD Ameritrade Letter, supra note 62.

⁷³ See Estell Letter, supra note 68; Mougey and Kraszewski Letter, supra note 43.

⁷⁴ FINRA has stated that "defining the term 'recommendation' is unnecessary and would raise many complex issues in the absence of specific facts of a particular case." Securities Exchange Act Release No. 37588, 1996 SEC LEXIS 2285, at *29 (Aug. 20, 1996), 61 FR. 44100, 44107 (Aug. 27, 1996) (Notice of Filing and Order Granting Accelerated Approval of NASD’s Interpretation of its Suitability Rule).

Finally, FINRA noted the relevance of determining whether a reasonable person would view the communication as a recommendation. Thus, for example, FINRA explained that a broker could not avoid suitability obligations through a disclaimer where—given its content, context, and presentation—the particular communication reasonably would be viewed as a recommendation.⁷⁵

These guiding principles, together with numerous litigated decisions and the facts and circumstances of any particular case, inform the determination of whether the communication is a recommendation for purposes of FINRA’s suitability rule.⁷⁶ FINRA believes that this guidance and these precedents allow broker-dealers to fundamentally understand what communications likely do or do not constitute recommendations.

⁷⁵ In the same vein, it is important to note that a customer’s acquiescence or desire to engage in a transaction does not relieve a broker-dealer or associated person of the responsibility to make only suitable recommendations. See, e.g., Clinton H. Holland, Jr., 52 S.E.C. 562, 566 (1995) (“Even if we conclude that Bradley understood Holland’s recommendations and decided to follow them, that does not relieve Holland of his obligation to make reasonable recommendations.”), aff’d, 105 F.3d 665 (9th Cir. 1997) (table format); John M. Reynolds, 50 S.E.C. 805, 809 (1991) (regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent with the customer’s financial condition); Eugene J. Erdos, 47 S.E.C. 985, 989 (1983) (“[W]hether [the customer] considered the transactions ... suitable is not the test for determining the propriety of [the registered representative’s] conduct.”), aff’d, 742 F.2d 507 (9th Cir. 1984); Dep’t of Enforcement v. Bendetsen, No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004) (“[A] broker’s recommendations must serve his client’s best interests and that the test for whether a broker’s recommendation is suitable is not whether the client acquiesced in them, but whether the broker’s recommendations were consistent with the client’s financial situation and needs.”).

⁷⁶ To the extent that past Notices to Members, Regulatory Notices, case law, etc., do not conflict with proposed new rule requirements or interpretations thereof, they remain potentially applicable, depending on the facts and circumstances of the particular case.

It also is important to emphasize that both the current and proposed suitability rules require that a recommendation be suitable when made. Firms may have different methods of tracking recommendations for a variety of reasons, but the main suitability obligation is not dependent on whether and, if so, where and how, a transaction occurs.⁷⁷

Finally, as noted above, the proposed rule would capture explicit recommendations to hold securities as a result of FINRA's elimination of the "purchase, sale or exchange" language and the addition of the term "strategy." Accordingly, there is no reason to define "recommendation" to include recommendations to hold securities.

Information Gathering

The proposal discussed in the Notice seeking comment made two changes to the type of information that firms and associated persons had to attempt to gather and analyze as part of their suitability obligation. First, the proposal would have required the firm and associated person to consider information known by the firm or associated person. Second, the proposal included an expanded list of information that members and associated persons would have to attempt to gather and analyze when making recommendations.

- **Information Known By the Firm**

The proposal discussed in the Notice would have required members and associated persons to consider all information about the customer that was "known by the member or associated person."

⁷⁷ See Nickles, 1992 NASD Discip. LEXIS 28, at *18.

O **Comments**

Some commenters supported requiring firms and brokers to analyze information known by the firm regardless of how the firm learned of the information.⁷⁸ However, other commenters were opposed to this requirement.⁷⁹ Some were opposed because of the difficulty they believed it would cause for firms with multiple business lines.⁸⁰ According to these commenters, customers may provide information for a variety of different purposes (e.g., banking, insurance, or securities transactions) to different employees working in different departments and recording the information on separate systems, and a single broker may not have access to all of that information.⁸¹

Other commenters opposed the language on the basis that it might require associated persons to capture and consider personal information that may not be relevant to investment decisions and that clients may not want captured in a system or shared with a broader audience (especially when the associated person has intimate knowledge of a client through a family relationship or friendship).⁸² According to the commenters, examples may include a diagnosed illness, pending divorce or separation, pending legal

⁷⁸ See Corporate Law Center & Investor Rights Clinic, supra note 43; St. John's Letter, supra note 43; Taurus Letter, supra note 43.

⁷⁹ See Charles Schwab Letter, supra note 46; Committee of Annuity Insurers Letter, supra note 34; FOLIOfn Letter, supra note 62; LPL Letter, supra note 48; NSCP Letter, supra note 35; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62.

⁸⁰ See Charles Schwab Letter, supra note 46; FOLIOfn Letter, supra note 62; NSCP Letter, supra note 34; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62.

⁸¹ See Charles Schwab Letter, supra note 46; SIFMA Letter, supra note 47.

⁸² See Committee of Annuity Insurers Letter, supra note 34; National Planning Holdings, supra note 48.

action, or other personal problems.⁸³ Finally, some commenters believed that such a requirement could be unfair to associated persons in situations where firms are aware of information about customers but do not pass it along to the associated persons.⁸⁴

o FINRA's Response

FINRA has modified the proposal and no longer refers to facts “known by the member or associated person.” The current proposal requires the member or associated person to have reasonable grounds to believe the recommendation is suitable based on “information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to, 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 customer may disclose to the member or associated person in connection with such recommendation.”

“Reasonable diligence” is that level of effort that, based on the facts and circumstances of the particular case, provides the member or associated person with sufficient information about the customer to have reasonable grounds to believe that the recommended security or strategy is suitable. The level of importance of each category of customer information may vary depending on the facts and circumstances of the particular case. However, members and associated persons must use reasonable diligence to gather and analyze the customer information and may only make a recommendation if they have reasonable grounds to believe the recommendation is suitable. In this regard,

⁸³ See Committee of Annuity Insurers Letter, supra note 34; National Planning Holdings, supra note 48.

⁸⁴ See LPL Letter, supra note 48; SIFMA Letter, supra note 47.

failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability, which requires a broker-dealer to have a reasonable basis to believe a recommendation is suitable for the particular investor at issue.

Apart from the new “reasonable diligence” language, the modified proposal also alters the wording at the end of paragraph (a) of the proposed rule. Instead of requiring members and associated persons to consider “any other information the member or associated person considers to be reasonable,” the modified proposal requires them to consider “any other information the customer may disclose to the member or associated person in connection with” the recommendation. In light of some of the comments noted above, FINRA believes it is important to tie this customer information to possible investment decisions.

▪ **Additional Information**

The proposal expands the explicit list of types of information that broker-dealers and associated persons have to attempt to gather and analyze. At present, the suitability rule requires that broker-dealers and associated persons attempt to gather information about and analyze the customer’s other security holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer. FINRA expanded that list to include the customer’s age, investment experience, investment time horizon, liquidity needs, and risk tolerance.

o **Comments**

Some commenters applauded FINRA for placing a clear affirmative duty on firms to make reasonable efforts to gather a more comprehensive and specific list of facts about the customer prior to making a recommendation.⁸⁵ These commenters believed that the investing public will benefit because broker-dealers will consider a larger number of consistent criteria.⁸⁶

A few other commenters, while agreeing that such information is relevant in some situations, stated that obtaining each specified category of information may not be warranted on every occasion.⁸⁷ These commenters requested that FINRA build flexibility into the rule and not mandate that the member seek to obtain these new categories of information for every recommended transaction.⁸⁸ According to these commenters, broker-dealers should have discretion to determine what customer information is relevant to the suitability determination associated with each recommended transaction.⁸⁹ If FINRA does require firms to obtain and capture this information, these commenters also asked FINRA to establish an effective date for the new rule that recognizes the difficulty

⁸⁵ See Corporate Law Center & Investor Rights Clinic, supra note 43; Mougey and Kraszewski Letter, supra note 43; St. John's Letter, supra note 43; T.RowePrice Letter, supra note 43.

⁸⁶ See St. John's Letter, supra note 43; Mougey and Kraszewski Letter, supra note 43.

⁸⁷ See Charles Schwab Letter, supra note 46; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; Wells Fargo Letter, supra note 62.

⁸⁸ See Charles Schwab Letter, supra note 46; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; Wells Fargo Letter, supra note 62.

⁸⁹ See Charles Schwab Letter, supra note 46; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; Wells Fargo Letter, supra note 62.

associated with developing, modifying, and implementing forms and systems to request and capture the proposed new categories of information.⁹⁰

Other commenters more strongly objected to the proposed expansion of the list of items that broker-dealers must attempt to gather and analyze.⁹¹ One commenter argued that factors such as a customer's investment experience, time horizon, and risk tolerance are ones to be considered when reviewing a customer's portfolio as a whole, not individual trades.⁹² According to this commenter, requiring consideration of such factors on a trade-by-trade basis will prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk, and time horizons.⁹³ This commenter also stated that requiring firms to attempt to gather information about a customer's "other investments" would be difficult because it would require an associated person to have a complete view of a customer's entire portfolio.⁹⁴ Another commenter went further and stated that the current list of items in Rule 2310 should be abolished.⁹⁵ The commenter stated that "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

⁹⁰ See Charles Schwab Letter, supra note 46; LPL Letter, supra note 48; SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

⁹¹ See FOLIOfn Letter, supra note 62.

⁹² See LPL Letter, supra note 48.

⁹³ See LPL Letter, supra note 48.

⁹⁴ See LPL Letter, supra note 48.

⁹⁵ See FOLIOfn Letter, supra note 62.

consumers.”⁹⁶ If that cannot be achieved, the commenter recommends limiting the information to that discussed in SEA Rule 17a-3.⁹⁷ This commenter also argued that FINRA should detail exactly how firms are required to use each piece of information that FINRA requires firms to gather.⁹⁸

Another commenter stated that FINRA should maintain a standard approach to the terminology used in relation to this aspect of the rule.⁹⁹ As an example, the commenter noted that the rule proposal uses the term “other investments,” while FINRA Rule 2330 covering deferred variable annuities uses “existing assets (including investment and life insurance holdings).”¹⁰⁰ The commenter believed that “other investments” is overly broad and that FINRA should use the term currently used in Rule 2330.¹⁰¹

Finally, one commenter argued that money market mutual funds be exempted from all or some of the requirements to gather information when making recommendations.¹⁰² According to the commenter, a current exemption from some

⁹⁶ See FOLIOfn Letter, supra note 62.

⁹⁷ See FOLIOfn Letter, supra note 62.

⁹⁸ See FOLIOfn Letter, supra note 62.

⁹⁹ See National Planning Holdings, supra note 48.

¹⁰⁰ See National Planning Holdings, supra note 48.

¹⁰¹ See National Planning Holdings, supra note 48.

¹⁰² See Tamara K. Salmon, Senior Associate Counsel for the Investment Company Institute, June 29, 2009 (“ICI Letter”).

information gathering for transactions in money market mutual funds should continue or be expanded in the proposed rule.¹⁰³

O FINRA's Response

Under the current suitability rule, broker-dealers must attempt to gather information on and analyze the customer's other holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by the firm or associated person in making recommendations to the customer. The expanded information in the proposed rule includes the customer's age, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA cannot dictate exactly how firms should use each piece of information. As discussed above, the level of importance of each category of customer information (not only those in the expanded list) may vary depending on the facts and circumstances of the particular case. However, failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability.

FINRA declines one commenter's request to exempt money market mutual funds from all or some of the requirements to gather information when making recommendations. By way of background, the original suitability rule (currently paragraph (a) of NASD Rule 2310) required firms and brokers to have reasonable grounds to believe that the recommendation to purchase, sell, or exchange any security is suitable based upon the facts, if any, disclosed by the customer as to "his other security holdings and as to his financial situation and needs." In 1990, the SEC approved

¹⁰³ See ICI Letter, supra note 102.

amendments that created a second information-gathering requirement (currently paragraph (b) of NASD Rule 2310).¹⁰⁴ The new paragraph added in 1990 required firms to make reasonable efforts to also obtain the customer's financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer.

Transactions involving money market mutual funds were exempted from the requirement under the new paragraph. However, transactions involving money market mutual funds were not exempted from the original suitability requirements under paragraph (a).

FINRA believes that recommended money market mutual funds should be subject to the same information-gathering requirements as other recommended securities. That is especially true in light of the problems experienced by the Reserve Primary Fund in late 2008.¹⁰⁵

Institutional Customer

At present, IM-2310-3 provides a limited exemption from the customer-specific obligation when dealing with institutional customers in certain situations. The proposal continues to provide an exemption, but it adds a requirement that institutional customers provide affirmative acknowledgement of certain aspects of their relationship with the broker-dealer and modifies the definition of institutional customer.

¹⁰⁴ See Securities Exchange Act Release No. 27982, 1990 SEC LEXIS 795 (May 2, 1990) (Order Approving Rule Change to Obtain Information Pertinent to Customer Account).

¹⁰⁵ As the SEC explained, "On Sept. 15, 2008, the Reserve Primary Fund, which held \$785 million in Lehman-issued securities, became illiquid when the fund was unable to meet investor requests for redemptions. The following day, the Reserve Fund declared it had 'broken the buck' because its net asset value had fallen below \$1 per share." <http://www.sec.gov/news/press/2010/2010-16.htm>.

▪ **Affirmative Acknowledgement Regarding Surrendering Rights**

As with the current suitability rule, the proposal provides an exemption from customer-specific suitability regarding institutional customers if the broker-dealer or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently and is exercising independent judgment in evaluating the member's or associated person's recommendations. However, the proposal discussed in the Notice seeking comment added as a third requirement that the institutional customer must affirmatively indicate that it is willing to forego the protection of the customer-specific obligation of the suitability rule.

o **Comments**

A number of commenters stated that requiring institutional customers to affirmatively acknowledge that they are giving up rights is impractical and will render the institutional exemption ineffective.¹⁰⁶ According to these commenters, this requirement is unnecessary in light of the other two conditions (that the customer be capable of evaluating risks and is exercising independent judgment).¹⁰⁷ The commenters also stated that, because institutional clients are highly unlikely to affirmatively forego suitability protections for commercial reasons, this new requirement will have the practical effect of negating the exemption.¹⁰⁸

¹⁰⁶ See Hancock, MetLife and Prudential Letter, supra note 50; NAIBD Letter, supra note 62; NSCP Letter, supra note 34; SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

¹⁰⁷ See NAIBD Letter, supra note 62; SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

¹⁰⁸ See Hancock, MetLife and Prudential Letter, supra note 50; NAIBD Letter, supra note 62; NSCP Letter, supra note 34; SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

o FINRA's Response

FINRA has modified the proposed exemption in a way that should alleviate commenters' concerns while providing the necessary protection to institutional customers. The revised exemption eliminates the requirement that institutional customers affirmatively indicate that they are giving up suitability protections and focuses on the two main conditions discussed in the current exemption. The revised exemption, however, does require institutional customers to affirmatively indicate that they are exercising independent judgment.

▪ Change in Definition

The proposal harmonizes the definition of "institutional customer" in the suitability rule with the more common definition of "institutional account" in NASD Rule 3110(c)(4) [proposed FINRA Rule 4512(c)]. As a result, the monetary threshold for an institutional customer would increase from the current \$10 million invested in securities and/or under management to \$50 million in assets. In addition, unlike the current exemption, a natural person could qualify as an institutional customer under the proposal.

o Comments

Some commenters supported the change in definition.¹⁰⁹ One commenter stated further that consistent standards produce more efficient, effective, and clear regulation that is beneficial to investors, regulators, and market participants alike.¹¹⁰ Other commenters, however, disagreed, arguing that the definition of \$10 million invested in securities and/or under management in current IM-2310-3 is a more appropriate standard

¹⁰⁹ See SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

¹¹⁰ See SIFMA Letter, supra note 47.

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.¹¹¹ According to one commenter, many highly sophisticated institutional brokerage customers would not satisfy the \$50 million dollar asset threshold but would not need the protection of the suitability rule.¹¹²

Another commenter who favored keeping the current standard stated that, if FINRA believes a different standard should be used for uniformity, FINRA should use the definition in NASD Rule 2211(a)(3) (Communications with the Public) rather than the one in NASD Rule 3110(c)(4).¹¹³ Under NASD Rule 2211, institutional sales material may be distributed only to “institutional investors,” defined to include several categories of persons, including those identified in NASD Rule 3110(c)(4). It also 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. This commenter also suggested that FINRA should make the standard a rebuttable presumption against determining that an entity that is outside the list of plans identified above is an institutional customer.¹¹⁴

¹¹¹ See Hancock, MetLife and Prudential Letter, supra note 50; NAIBD Letter, supra note 62; NSCP Letter, supra note 34.

¹¹² See NAIBD Letter, supra note 62.

¹¹³ See Hancock, MetLife and Prudential Letter, supra note 50.

¹¹⁴ See Hancock, MetLife and Prudential Letter, supra note 50. In addition, one commenter stated that the exemption should apply to all suitability obligations and should not, as previously had been the case, be limited to customer-specific suitability. See SIFMA Letter, supra note 47. FINRA believes that the exemption should remain focused on customer-specific suitability. For instance, it remains

Finally, one commenter argued that there should not be any exemption for institutional customers.¹¹⁵ According to this commenter, many institutional customers, even those with \$50 million in assets, are not particularly sophisticated about complex securities and need the protections of the suitability rule.¹¹⁶

O FINRA's Response

While any standard is imperfect, FINRA believes that it is important to use the definition in Rule 3110(c)(4) for consistency and because of its higher monetary threshold. FINRA does not believe that it is appropriate to use the much broader definition in NASD Rule 2211(a)(3), which defines “institutional investor” for purposes of the rules governing communications with the public. Communications that are distributed or made available only to institutional investors qualify as institutional sales material, which is not subject to the same content, principal approval and filing requirements as communications that are distributed or made available to retail investors. The communication rules’ requirements, while important, serve a different purpose than the sales-practice protections that the suitability rule provides when a broker-dealer recommends a security to a customer.

FINRA understands the concern that even some institutional customers with \$50 million in assets might be unsophisticated about complex securities and need the protections of the suitability rule. However, the exemption would not apply in that circumstance. Again, the broker-dealer or associated person must have a reasonable basis

important that brokers understand the securities they recommend and that those securities are appropriate for at least some investors.

¹¹⁵ See Mougey and Kraszewski Letter, supra note 43.

¹¹⁶ See Mougey and Kraszewski Letter, supra note 43.

to believe that the institutional customer is capable of evaluating investment risks independently and, under the modified proposal, the customer must affirmatively state that it is exercising independent judgment in evaluating the recommendations.

▪ **Eliminating Detailed Discussion from IM-2310-3**

Although the focus is the same, the proposed institutional exemption is considerably shorter in length than the current one. Its brevity generated one comment.

o **Comments**

One commenter viewed the new, abbreviated institutional investor discussion in the proposal as a “box check” waiver that provides less protection than the detailed discussion in IM-2310-3 of considerations for determining whether the exemption should apply.¹¹⁷

o **FINRA’s Response**

The proposed institutional investor discussion, while shorter than the current version in IM-2310-3, contains certain stricter standards. In addition to the two main considerations used in both versions, the proposal includes an increased monetary threshold that certain institutions must meet to qualify for the exemption and, even more important, a requirement that the institution affirmatively indicate that it is independently evaluating the firm’s recommendations.

Supplementary Material

The Consolidated FINRA Rulebook uses supplementary material to discuss certain aspects of a rule’s requirements in greater detail. However, a number of commenters raised issues regarding the supplementary material.

¹¹⁷ See NASAA Letter, supra note 33.

▪ **Comments**

A number of commenters supported codifying various interpretations of the suitability rule.¹¹⁸ Some commenters, however, believed that FINRA should modify some of those interpretations. For instance, one commenter questioned the “three-pronged approach” to suitability discussed in Supplementary Material .02, which codifies discussions in IMs and case law about reasonable-basis suitability, customer-specific suitability, and quantitative suitability. This commenter suggested that the approach created new standards that provide less protection to customers.¹¹⁹ This commenter took particular issue with reasonable-basis suitability, which requires a broker-dealer to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least *some* investors.¹²⁰ The commenter believed that a member’s familiarity with a product should be presumed.¹²¹

Two other comments focused on quantitative suitability, which requires a broker-dealer that has actual or de facto control over an 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 investment profile. These commenters believed that FINRA should eliminate the requirement under quantitative suitability that a broker-dealer have

¹¹⁸ See Corporate Law Center & Investor Rights Clinic, supra note 43; Taurus Letter, supra note 43; T.RowePrice Letter, supra note 43.

¹¹⁹ See NASAA Letter, supra note 33.

¹²⁰ See NASAA Letter, supra note 33.

¹²¹ See NASAA Letter, supra note 33.

“control” over an account before the obligation applies.¹²² Yet another commenter stated that FINRA should eliminate supplementary material from all rules and limit rulemaking to rule text.¹²³

▪ **FINRA’s Response**

FINRA believes that supplementary material is an important means of providing greater specificity to a rule’s overarching requirements. FINRA notes that supplementary material will be filed with the SEC and is enforceable to the same extent as the main rule text.

With regard to the codification of the main suitability obligations, FINRA disagrees with the contention that the discussion creates new standards that provide less protection to customers. The discussion at issue codifies existing interpretations of suitability obligations, often directly from IMs following NASD Rule 2310¹²⁴ and case law.¹²⁵ The commenter argued that presuming that firms and associated persons are

¹²² See Cornell Letter, supra note 43; Estell Letter, supra note 68.

¹²³ See FOLIOfn Letter, supra note 62.

¹²⁴ See, e.g., IM-2310-2(b)(2) (discussing quantitative suitability, also called excessive trading); IM-2310-3 (discussing reasonable-basis and customer-specific suitability).

¹²⁵ See, e.g., James B. Chase, Securities Exchange Act Release No. 47476, 2003 SEC LEXIS 566, at *17 (Mar. 10, 2003) (involving customer-specific suitability); Harry Gliksman, 54 S.E.C. 471, 474-75 (1999) (discussing excessive trading); Rafael Pinchas, 54 S.E.C. 331 (1999) (discussing excessive trading and customer-specific suitability); F.J. Kaufman & Co., 50 S.E.C. 164, 168-69 (1989) (discussing both reasonable-basis and customer-specific suitability); Patrick G. Keel, 51 S.E.C. 282, 284-87 (1993) (upholding violation of customer-specific suitability); Dep’t of Enforcement v. Medeck, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *31 (NAC July 30, 2009) (discussing excessive trading); Dep’t of Enforcement v. Siegel, No. C05020055, 2007 NASD Discip. LEXIS 20, at *36-40 (NAC May 11, 2007) (discussing reasonable-basis suitability and due-diligence requirement thereunder), aff’d, Securities Exchange Act Release No.

familiar with the products they recommend would provide greater protection to customers. FINRA believes the opposite is true, and FINRA's examination and enforcement experience belies the notion that firms and associated persons are always familiar with every recommended product or strategy. The existing duty to perform adequate due diligence to understand the products and strategies that firms and associated persons recommend is of critical importance to the protection of investors.¹²⁶ This is especially true in light of the increasing complexity of certain products and strategies.

Elimination of Interpretive Material Following NASD Rule 2310

In connection with the new suitability rule, FINRA proposes eliminating many and modifying some of the IMs that follow NASD Rule 2310. This aspect of the proposal also generated several comments.

58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), aff'd in relevant part, 592 F.3d 147 (D.C. Cir. Jan. 12, 2010), cert. denied, 2010 U.S. LEXIS 4340 (May 24, 2010); see also Regulatory Notice 10-22, 2010 FINRA LEXIS 43, at *10-20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); Notice to Members 03-71, 2003 NASD LEXIS 81, *5-6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

¹²⁶ See F.J. Kaufman & Co., 50 S.E.C. at 168-69 (discussing both reasonable-basis and customer-specific suitability); Siegel, 2007 NASD Discip. LEXIS 20, at *36-40 (discussing reasonable-basis suitability and due-diligence requirement thereunder); see also Regulatory Notice 10-22, 2010 FINRA LEXIS 43, at *10-20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); Notice to Members 03-71, 2003 NASD LEXIS 81, *5-6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

▪ **Comments**

A few commenters were concerned that the proposal did not include some of the current IMs, especially IM-2310-2.¹²⁷ These commenters believe that it is important to maintain the statement in IM-2310-2 that brokers can be disciplined for excessive trading, unauthorized trading, and fraud.¹²⁸ One commenter noted in particular that this IM was the only place in the entire NASD conduct rules explicitly prohibiting unauthorized trading.¹²⁹

▪ **FINRA's Response**

FINRA continues to believe that most of the current IMs following NASD Rule 2310 should be eliminated or modified because they are no longer necessary. As discussed in detail in Item 3 of this filing, some are duplicative of other rules and others would be rendered unnecessary by changes proposed in the new suitability rule. For example, as noted in Item 3, it is well-settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010. Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way alters the longstanding view that unauthorized trading clearly violates FINRA's rules.

**KNOW YOUR CUSTOMER
(Proposed FINRA Rule 2090)**

The proposal would require broker-dealers to use "due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts

¹²⁷ See Cornell Letter, supra note 43; Corporate Law Center & Investor Rights Clinic, supra note 43; NASAA Letter, supra note 33.

¹²⁸ See Cornell Letter, supra note 43; Corporate Law Center & Investor Rights Clinic, supra note 43; NASAA Letter, supra note 33.

¹²⁹ See Corporate Law Center & Investor Rights Clinic, supra note 43.

concerning every customer and concerning the authority of each person acting on behalf of such customer.” Although there were some comments generally in favor of the proposal,¹³⁰ most comments addressed specific language, as discussed below.

Essential Facts

The proposal states that broker-dealers must attempt to learn the “essential facts” concerning every customer. Supplementary Material .01 that was discussed in the Notice seeking comment clarified that “facts ‘essential’ to ‘knowing the customer’ included the customer’s financial profile and investment objectives or policy.” That language generated a fairly large number of comments.

▪ Comments

A number of commenters argued that the collection of financial profile and investment objective information under the proposed “know your customer” rule is a new requirement and unnecessarily confuses “know your customer” obligations with suitability obligations.¹³¹ One commenter believed it would mislead customers into incorrectly thinking that a firm would only permit a customer to execute a self-directed transaction if it has determined that the transaction is appropriate for that customer.¹³² Along those same lines, other commenters believed the requirement would be particularly problematic where a customer’s trading activity is self-directed or directed by an

¹³⁰ See, e.g., Cornell Letter, supra note 43.

¹³¹ See Charles Schwab Letter, supra note 46; Matthew Farley, Drinker, Biddle & Reath LLP, June 29, 2009 (“Drinker Biddle Letter”); FOLIOfn Letter, supra note 62; NAIBD Letter, supra note 62; NSCP Letter, supra note 34; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; T.RowePrice Letter, supra note 43; Wells Fargo Letter, supra note 62.

¹³² See T.RowePrice Letter, supra note 43.

independent investment adviser because regulators or private litigants could seek to hold firms accountable for permitting unsolicited customer trading activity that is inconsistent with the “know your customer” information that is on record at the firm.¹³³

Some of these commenters supported “know your customer” obligations, but believed they should be limited in scope to essential facts necessary to open the account – i.e., the identity and address of each account owner, 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.¹³⁴ Some commenters suggested removing proposed Supplementary Material .01 to Rule 2090 in its entirety and instead permitting 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.¹³⁵ Another commenter similarly stated that the information should be limited to an investor’s name, address, and tax identification number, which the commenter asserted was all the information that is needed to know the customer’s identity and to make a credit determination.¹³⁶

¹³³ See Charles Schwab Letter, supra note 46; Drinker Biddle Letter, supra note 131; FOLIOfn Letter, supra note 62; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; Wells Fargo Letter, supra note 62. One commenter made the same claim in the context of clearing firms and also stated that 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. See Drinker Biddle Letter, supra note 131.

¹³⁴ See SIFMA Letter, supra note 47; Wells Fargo Letter, supra note 62.

¹³⁵ See SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 62; Wells Fargo Letter, supra note 62.

¹³⁶ See FOLIOfn Letter, supra note 62.

One commenter, however, believed that firms should have to make reasonable efforts to collect the types of information delineated in paragraph (a) of proposed Rule 2111.¹³⁷ This commenter indicated that each of those factors is essential to knowing the customer.¹³⁸ Others suggested that the term should be clarified.¹³⁹

▪ **FINRA's Response**

After analyzing the comments, FINRA agrees with those commenters who stated that the “know your customer” obligation should remain flexible and that the extent of the obligation generally should depend on a particular firm’s business model, its customers, and applicable regulations. As a result, FINRA has modified proposed Supplementary Material .01 to FINRA Rule 2090 so that it is less prescriptive. That provision now states: “For purposes of this Rule, facts ‘essential’ to ‘knowing the customer’ are those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.”

Maintenance of Every Account

A few commenters focused on the “maintenance” aspect of the “know your customer” requirement.

¹³⁷ See Cornell Letter, supra note 43.

¹³⁸ See Cornell Letter, supra note 43.

¹³⁹ See Committee of Annuity Insurers Letter, supra note 34.

▪ **Comments**

Two commenters stated that the “maintenance” language was both new and vague and would lead to practical implementation issues, particularly in the retirement plan marketplace.¹⁴⁰ The commenters stated that FINRA should provide more guidance on what it means by “maintenance” and an opportunity to comment if it keeps the term.¹⁴¹

▪ **FINRA’s Response**

FINRA believes that it is self-evident that a broker-dealer must know its customers not only at account opening but also throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customer accounts. Since a broker-dealer’s relationship with its customers is dynamic, FINRA does not believe that it can prescribe a period within which broker-dealers must attempt to update this information. Firms should verify the essential facts about customers at intervals reasonably calculated to prevent and detect any mishandling of customer accounts that might result from changes to the “essential facts” about the customers.¹⁴² The reasonableness of a broker-dealer’s efforts in this regard will depend on the facts and circumstances of the particular case.

¹⁴⁰ See Committee of Annuity Insurers Letter, supra note 34; Hancock, MetLife and Prudential Letter, supra note 50.

¹⁴¹ See Committee of Annuity Insurers Letter, supra note 34; Hancock, MetLife and Prudential Letter, supra note 50.

¹⁴² Broker-Dealers should note, however, that, under SEA Rule 17a-3, they must, among other things, attempt to update certain account information every 36 months regarding accounts for which the broker-dealers were required to make suitability determinations.

Not Applicable to Every Order

At present, NYSE Rule 405(1) applies to “every order.” The proposal eliminates this language.

▪ **Comments**

Two commenters argued that the proposed “know your customer” rule should, as is true currently under NYSE Rule 405(1), require due diligence as to “every order” and not simply as to every account.¹⁴³ These commenters stated that it was a mistake to focus on knowing the customer rather than knowing both the customer and the product.¹⁴⁴ One of these commenters did not believe that reasonable-basis suitability provides enough protection in that respect in part because the suitability rule applies only when a recommendation is made.¹⁴⁵

▪ **FINRA’s Response**

FINRA is not proposing to adopt the NYSE requirement to learn the essential facts relative to every order in NYSE Rule 405(1), given the application of specific order-handling rules.¹⁴⁶ In addition, as noted by a commenter, the reasonable-basis obligation under the suitability rule requires broker-dealers and associated persons to know the securities and strategies they recommend through performing adequate due diligence.

6. Extension of Time Period for Commission Action

Not applicable.

¹⁴³ See Cornell Letter, supra note 43; NASAA, supra note 33.

¹⁴⁴ See Cornell Letter, supra note 43; NASAA, supra note 33.

¹⁴⁵ See NASAA, supra note 33.

¹⁴⁶ See supra note 24.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. FINRA Regulatory Notice 09-25 (May 2009).

Exhibit 2b. Index to comments received in response to FINRA Regulatory Notice 09-25 (May 2009).

Exhibit 2c. Comments received in response to FINRA Regulatory Notice 09-25 (May 2009).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2010-039)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on ,
Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 2111 (Suitability) and FINRA Rule 2090 (Know Your Customer) as part of the Consolidated FINRA Rulebook. The proposed rules are based in large part on NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related Interpretative Materials (“IMs”) and Incorporated NYSE Rule 405(1) (Diligence as to Accounts), respectively. As further detailed herein, the proposed rule change would delete those NASD and Incorporated NYSE rules and related NASD IMs and Incorporated NYSE Rule Interpretations.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt FINRA Rule 2111 (Suitability) and FINRA Rule 2090 (Know Your Customer). The rules are based in large part on NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related IMs and NYSE Rule 405(1) (Diligence as to Accounts), respectively.⁴ As further discussed below, the

³ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

proposed rule change would delete NASD Rule 2310, IM-2310-1 (Possible Application of SEC Rules 15c-1 through 15c-9), IM-2310-2 (Fair Dealing with Customers), IM-2310-3 (Suitability Obligations to Institutional Customers), NYSE Rule 405(1) through (3) (including NYSE Supplementary Material 405.10 through .30), and NYSE Rule Interpretations 405/01 through /04.⁵

The suitability and “know your customer” obligations are critical to ensuring investor protection and fair dealing with customers. Under the proposal, the core features of these obligations set forth in NASD Rule 2310 and NYSE Rule 405(1) remain intact. FINRA, however, proposes modifications to both rules to strengthen and clarify them. In Regulatory Notice 09-25 (May 2009), FINRA sought comment on the proposal. The current filing includes additional proposed changes that respond to comments.

Item II.C. of this filing provides a detailed discussion of the proposed modifications, comments FINRA received, and FINRA’s responses thereto. In brief, however, the proposed new suitability rule, designated FINRA Rule 2111, would require a broker-dealer or associated person to have “a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer...”⁶ This assessment must be “based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to, the customer’s age, other

⁵ FINRA notes that NYSE Rule 405(4) was eliminated from the Transitional Rulebook on June 14, 2010 pursuant to a previous rule filing. See Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010) (Order Approving File No. SR-FINRA-2010-005); see also Regulatory Notice 10-21 (April 2010).

⁶ See Proposed FINRA Rule 2111(a).

investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.”⁷

The proposal would add the term “strategy” to the rule text so that the rule explicitly covers a recommended strategy. Although FINRA generally intends the term “strategy” to be interpreted broadly, the proposed supplementary material would exclude the following communications from the coverage of Rule 2111 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities:

- General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimating future retirement income needs, and (v) assessment of a customer’s investment profile;
- Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;
- Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor’s assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an “investment analysis tool” covered by NASD IM-2210-6;⁸ and

⁷ See Proposed FINRA Rule 2111(a). As discussed infra at Item II.C. of this filing, FINRA modified various aspects of the proposed information-gathering requirements in response to comments.

⁸ FINRA is proposing to adopt NASD IM-2210-6 as FINRA Rule 2214, without material change. See Regulatory Notice 09-55 (September 2009).

- Interactive investment materials that incorporate the above.⁹

The proposal also would codify interpretations of the three main suitability obligations, listed below:

- Reasonable basis (members must have a reasonable basis to believe, based on adequate due diligence, that a recommendation is suitable for at least some investors);
- Customer specific (members must have reasonable grounds to believe a recommendation is suitable for the particular investor at issue); and
- Quantitative (members must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive).¹⁰

In addition, the proposal would modify the institutional-customer exemption by focusing on whether there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies,¹¹ and is exercising independent

⁹ See Proposed FINRA Rule 2111.02. As discussed infra at Item II.C. of this filing, FINRA included this exception to the rule's coverage in response to comments.

¹⁰ See Proposed FINRA Rule 2111.03.

¹¹ See Proposed FINRA Rule 2111(b). The requirement in Proposed FINRA Rule 2111(b) that the firm or associated person have a reasonable basis to believe that "the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies" comes from current IM-2310-3. As FINRA explained in that IM, "[i]n some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk." FINRA further stated that, "[i]f a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member's customer-specific obligations under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer." FINRA also stated that "the fact that a customer initially needed help

judgment in evaluating recommendations.¹² The proposal, moreover, would require institutional customers to affirmatively indicate that they are exercising independent judgment.¹³ The proposal also would harmonize the definition of institutional customer in the suitability rule with the more common definition of “institutional account” in NASD Rule 3110(c)(4).¹⁴

Finally, the suitability proposal would eliminate or modify a number of the IMs associated with the existing suitability rule because they are no longer necessary. Some of the discussions are not needed because of the changes to the scope of the suitability rule proposed herein (e.g., the proposed rule text would capture “strategies” currently referenced in IM-2310-3).¹⁵ Others are redundant because they identify conduct explicitly covered by other rules (e.g., inappropriate sale of penny stocks referenced in

understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent decision.”

¹² See Proposed FINRA Rule 2111(b).

¹³ See Proposed FINRA Rule 2111(b). As discussed infra at Item II.C. of this filing, FINRA substituted this requirement for another in response to comments. FINRA emphasizes that the institutional-customer exemption applies only if both parts of the two-part test are met: (1) there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, in general and with regard to particular transactions and investment strategies, and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating recommendations.

¹⁴ See Proposed FINRA Rule 2111(b). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c), without material change. See Regulatory Notice 08-25 (May 2008).

¹⁵ See Proposed Rule 2111(a).

IM-2310-1 is covered by the SEC's penny stock rules,¹⁶ fraudulent conduct identified in IM-2310-2 is covered by the FINRA and SEC anti-fraud provisions¹⁷).

Still other IM discussions have been incorporated in some form into the proposed rule or its supplementary material. For example, the exemption in IM-2310-3 dealing with institutional customers is modified and moved to the text of proposed FINRA Rule 2111.¹⁸ In addition, the explication of the three main suitability obligations, currently located in IM-2310-2 and IM-2310-3, are consolidated into a single discussion in the proposed rule's supplementary material.¹⁹ Similarly, the proposed rule's supplementary material includes a modified form of the current requirement in IM-2310-2 that a member refrain from recommending purchases beyond a customer's capability.²⁰ The supplementary material also retains the discussion in IM-2310-2 and IM-2310-3 regarding the suitability rule's significance in promoting fair dealing with customers and ethical sales practices.²¹

The only type of misconduct identified in the IMs that is neither explicitly covered by other rules nor incorporated in some form into the proposed new suitability rule is unauthorized trading, currently discussed in IM-2310-2. However, it is well-settled that unauthorized trading violates just and equitable principles of trade under

¹⁶ See SEA Rule 15g-1 through 15g-9.

¹⁷ See Section 10(b) of the Act; FINRA Rule 2020.

¹⁸ See Proposed Rule 2111(a).

¹⁹ See Proposed Rule 2111.03.

²⁰ See Proposed Rule 2111.04.

²¹ See Proposed Rule 2111.01.

FINRA Rule 2010 (previously NASD Rule 2110).²² Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way alters the longstanding view that unauthorized trading is serious misconduct and clearly violates FINRA's rules.

The proposed FINRA "Know Your Customer" obligation, designated FINRA Rule 2090, captures the main ethical standard of NYSE Rule 405(1). As proposed, broker-dealers would be required to use "due diligence," in regard to the opening and maintenance of every account, in order to know the essential facts concerning every customer.²³ The obligation would arise at the beginning of the customer/broker relationship, independent of whether the broker has made a recommendation. The proposed supplementary material would define "essential facts" as those "required to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules."²⁴

The proposal would eliminate the requirement in NYSE Rule 405(1) to learn the essential facts relative to "every order." FINRA proposes eliminating the "every order"

²² See, e.g., Robert L. Gardner, 52 S.E.C. 343, 344 n.1 (1995), aff'd, 89 F.3d 845 (9th Cir. 1996) (table format); Keith L. DeSanto, 52 S.E.C. 316, 317 n.1 (1995), aff'd, 101 F.3d 108 (2d Cir. 1996) (table format); Jonathan G. Ornstein, 51 S.E.C. 135, 137 (1992); Dep't of Enforcement v. Griffith, No. C01040025, 2006 NASD Discip. LEXIS 30, at *11-12 (NAC Dec. 29, 2006); Dep't of Enforcement v. Puma, No. C10000122, 2003 NASD Discip. LEXIS 22, at *12 n.6 (NAC Aug. 11, 2003).

²³ See Proposed FINRA Rule 2090.

²⁴ See Proposed FINRA Rule 2090.01. As discussed infra at Item II.C. of this filing, FINRA changed the explanation of "essential facts" in response to comments.

language because of the application of numerous, specific order-handling rules.²⁵ In addition, the reasonable-basis obligation under the suitability rule requires broker-dealers and associated persons to perform adequate due diligence so that they “know” the securities and strategies they recommend.

FINRA also is proposing to delete NYSE Rule 405(2) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretation 405/01 through /04 because they generally are duplicative of other rules, regulations, or laws. For instance, NYSE Rule 405(2) requires firms to supervise all accounts handled by registered representatives. That provision is redundant because NASD Rule 3010 requires firms to supervise their registered representatives.²⁶

NYSE Rule 405(3) generally requires persons designated by the member to be informed of the essential facts relative to the customer and to the nature of the proposed account and to then approve the opening of the account. A number of other existing and proposed FINRA rules do or will create substantially similar obligations. Proposed FINRA Rule 2090, discussed herein, would require members to know the essential facts

²⁵ See, e.g., SEC Regulation NMS (National Market System), 17 CFR 242.600-242.612; FINRA Rule 7400 Series (Order Audit Trail System); NASD Rule 2320 (Best Execution and Interpositioning) [proposed FINRA Rule 5310; see Regulatory Notice 08-80 (December 2008)]; NASD Rule 2400 Series (Commissions, Mark-Ups and Charges); NASD IM-2110-2 (Trading Ahead of Customer Limit Order) [proposed FINRA Rule 5320; see SR-FINRA-2009-090]; and IM-2110-3 (Front Running Policy) [proposed FINRA Rule 5270; see Regulatory Notice 08-83 (December 2008)].

²⁶ FINRA is proposing to adopt NASD Rule 3010 as FINRA Rule 3110, subject to certain amendments. See Regulatory Notice 08-24 (May 2008).

as to each customer. NASD Rule 3110(c)(1)(C) requires the signature of the member, partner, officer or manager who accepts the account.²⁷

A firm's account-opening obligations also are impacted by FINRA Rule 3310, which requires a firm to have procedures reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations. One of those regulations requires the firm to verify the identity of a customer opening a new account.²⁸ Another requires due diligence that would enable the firm to evaluate the risk of each customer and to determine if transactions by the customer could be suspicious and need to be reported.²⁹ Moreover, before certain customers can purchase certain types of investment products (such as options, futures or penny stocks) or engage in certain strategies (such as day trading), the firm must explicitly approve their accounts for such activity.³⁰

NYSE Supplementary Material 405.10 is redundant of other FINRA proposed and existing requirements, and the cross references provided in .20 and .30 are no longer necessary. NYSE Supplementary Material 405.10 generally discusses the requirements that firms know their customers and understand the authority of third-parties to act on behalf of customers that are legal entities. Proposed FINRA Rule 2090 and proposed

²⁷ FINRA is proposing to adopt NASD Rule 3110(c)(1)(C) as FINRA Rule 4512(a)(1)(C), subject to certain amendments. See Regulatory Notice 08-25 (May 2008). Proposed FINRA Rule 4512(a)(1)(C) would clarify that members maintain the signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts.

²⁸ See 31 CFR 103.122.

²⁹ See 31 CFR 103.19.

³⁰ See, e.g., SEA Rule 15g-1 through 15g-9 (Penny Stock Rules); FINRA Rule 2360 (Options); FINRA Rule 2370 (Security Futures); FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts).

FINRA Supplementary Material 2090.01, discussed herein, would require firms to know the essential facts as to each customer. NYSE Supplementary Material 405.10 also discusses certain documentation obligations regarding persons authorized to act on behalf of various types of customers that are legal entities. NASD Rule 3110(c) (Customer Account Information), however, similarly requires firms to maintain a record identifying the person(s) authorized to transact business on behalf of a customer that is a legal entity.³¹ NYSE Supplementary Material 405.20 and .30 provide cross references to NYSE Rule 382 (Carrying Agreements) and NYSE Rule 414 (Index and Currency Warrants), respectively, which are no longer necessary or appropriate for inclusion in proposed FINRA Rule 2090.

The NYSE Rule Interpretations also are redundant. NYSE Rule Interpretations 405/01 (Credit Reference—Business Background) and /02 (Approval of New Accounts/Branch Offices) recommend that the credit references and business backgrounds of a new account be cleared by a person other than the registered representative opening the account and require a designated person to ultimately approve a new account. These obligations are substantially similar to the requirements in NASD Rule 3110(c)(1)(C) and FINRA Rule 3310, discussed above.

NYSE Rule Interpretation 405/03 (Fictitious Orders) states that firm “personnel opening accounts and/or accepting orders for new or existing accounts should make every effort to verify the legitimacy of the account and the validity of every order.” The interpretation contemplates knowing the customer behind the order as part of the process

³¹ As noted previously, FINRA is proposing to adopt NASD Rule 3110(c) as FINRA Rule 4512 (Customer Account Information), subject to certain amendments. See Regulatory Notice 08-25 (May 2008).

of ensuring that the order is bona fide. Proposed FINRA Rule 2090 and FINRA Rule 3310 together place similar requirements on firms to know their customers.

To the extent NYSE Rule Interpretation 405/03 seeks to guard against the use of fictitious trades as a means of manipulating markets, various FINRA rules cover such activities. FINRA Rule 5210 (Publication of Transactions and Quotations) prohibits members from publishing or circulating or causing to publish or circulate, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of, or purports to quote the bid or asked price for, any security unless such member believes that such transaction or quotation was bona fide. FINRA Rule 5220 (Offers at Stated Prices) prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell at such price and under such conditions as are stated at the time of such offer to buy or sell. Moreover, the use of fictitious transactions by a member or associated person to manipulate the market would violate FINRA's just and equitable principles of trade (FINRA Rule 2010) and anti-fraud provision (FINRA Rule 2020).³²

NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) discusses requirements regarding transactions initiated "on the Floor" for an account in which a member organization has an interest. The interpretation is directed to the NYSE marketplace. Moreover, Section 11(a) of the Act and the rules thereunder address trading by members of exchanges, brokers and dealers. For the

³² See, e.g., Terrance Yoshikawa, Securities Exchange Act Release No. 53731, 2006 SEC LEXIS 948 (April 26, 2006) (upholding finding that president of broker-dealer violated just and equitable principles of trade and anti-fraud provisions by fraudulently entering orders designed to manipulate the price of securities).

reasons discussed above, FINRA believes NYSE Rule 405(1) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretations 405/01 through /04 are no longer necessary. They will be eliminated from the current FINRA rulebook upon Commission approval and implementation by FINRA of this current proposed rule change.

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

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³³ which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it requires firms and associated persons to know, deal fairly with, and make only suitable recommendations to customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As noted above, the proposed rule change was published for comment in Regulatory Notice 09-25 (May 2009). A copy of the Notice is attached as Exhibit 2a. FINRA received 2,083 comment letters, 389 of which were individualized letters and

³³ 15 U.S.C. 78o-3(b)(6).

1,694 of which were form letters. A copy of the index to comment letters received in response to the Notice is attached as Exhibit 2b, and copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

Comments came from broker-dealers, insurers, investment advisers, academics, industry associations, investor-protection groups, lawyers in private practice, and a state government agency. Commenters had myriad different views regarding nearly every aspect of the proposal. A discussion of those comments and FINRA's responses thereto follows.

SUITABILITY (Proposed FINRA Rule 2111)

Fiduciary Standard

Although FINRA did not request comment on whether fiduciary obligations should influence the suitability proposal, more than a thousand commenters raised issues involving fiduciary obligations. A brief discussion of these issues is thus warranted.

▪ Comments

One commenter suggested that FINRA should consider a fiduciary duty standard in addition to a suitability standard.³⁴ Numerous other commenters argued that FINRA should not move forward with proposed changes to the suitability rule until after policymakers (e.g., Congress, the SEC, and/or FINRA) determine whether broker-dealers must comply with fiduciary obligations.³⁵ One commenter further posited that it would

³⁴ Rex A. Staples, General Counsel for the North American Securities Administrators Association, July 13, 2009 ("NASAA Letter").

³⁵ See Joan Hinchman, Executive Director, President, and CEO of the National Society of Compliance Professionals Inc., June 29, 2009 ("NSCP Letter"); Clifford Kirsch and Eric Arnold, Sutherland Asbill & Brennan LLP for the Committee of Annuity Insurers, June 29, 2009 ("Committee of Annuity Insurers

be easier for firms to implement a single, integrated change to customer care standards adopted at one time.³⁶

▪ FINRA's Response

FINRA notes that the application of a suitability standard is not inconsistent with a fiduciary duty standard. In this regard, the SEC emphasized in one release that "investment advisers under the Advisers Act," who have fiduciary duties, "owe their clients the duty to provide only suitable investment advice.... To fulfill this suitability obligation, an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives."³⁷ In another release, the SEC similarly explained that "[i]nvestment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable investment advice."³⁸

Suitability obligations constitute a material part of a fiduciary standard in the context of investment advice and recommendations. It also is important to note that case law makes clear that, under FINRA's suitability rule, "a broker's recommendations must

Letter"). In addition, 435 individuals and entities made this point, among others, using one form letter ("Form Letter Type A") and 1,197 individuals did so using another form letter ("Form Letter Type B").

³⁶ See NSCP Letter, supra note 35.

³⁷ Release Nos. IC-22579, IA-1623, S7-24-95, 1997 SEC LEXIS 673, at *26 (Mar. 24, 1997) (Status of Investment Advisory Programs under the Investment Company Act of 1940). See also Shearson, Hammill & Co., 42 S.E.C. 811 (1965) (finding willful violations of Section 206 of the Advisers Act when investment adviser made unsuitable recommendations).

³⁸ Investment Advisers Act Release No. 1406, 1994 SEC LEXIS 797, at *4 (Mar. 16, 1994) (Suitability of Investment Advice Provided by Investment Advisers).

be consistent with his customers' best interests."³⁹ Thus, the suitability obligations set forth in proposed Rule 2111 would not be inconsistent with the addition of a fiduciary duty at some future date.⁴⁰

Scope of the Suitability Rule

FINRA sought comment on two main issues potentially impacting the scope of the suitability rule: whether to add the term “strategy” to the rule language and whether to broaden the rule so that it reaches non-securities products. The second issue was not highlighted in the rule text. Rather, it was raised in a discussion in the Notice seeking comment.

▪ Strategies

The issue of whether the suitability rule applies to recommended strategies has been addressed previously. SEC and FINRA discussions in IMs, releases, and notices, as well as in some decisions, indicate that the current suitability rule applies to certain types of recommended strategies.

³⁹ Raghavan Sathianathan, Securities Exchange Act Release No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006), aff'd, 304 F. App'x 883 (D.C. Cir. 2008); see also Dane S. Faber, Securities Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at *23-24 (Feb. 10, 2004) (explaining that a broker's recommendations “must be consistent with his customer's best interests”); Daniel R. Howard, 55 S.E.C. 1096, 1099-1100 (2002) (same), aff'd, 77 F. App'x 2 (1st Cir. 2003).

⁴⁰ FINRA notes as well that the suitability rule is only one of many FINRA business-conduct rules with which broker-dealers and their associated persons must comply. Many FINRA rules prohibit, limit, or require disclosure of conflicts of interest. Broker-dealers and their associated persons, for instance, must comply with just and equitable principles of trade, standards for communications with the public, order-handling requirements, fair-pricing standards, and various disclosure obligations regarding research, trading, compensation, margin, and certain sales and distribution activity, among others, in addition to suitability obligations.

NASD IM-2310-3 (Suitability Obligations to Institutional Customers) provides in its “Preliminary Statement” that broker-dealers’ “responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made.” Similarly, Notices to Members have stated that broker-dealers’ responsibilities under Rule 2310 “include having a reasonable basis for recommending a particular security or strategy.”⁴¹ Moreover, when the SEC published FINRA’s Online Suitability Policy Statement, Notice to Members 01-23 (Apr. 2001) (“NTM 01-23”), in the Federal Register, the Commission included the following statement in the release: “The Commission notes that although [NTM] 01-23 does not expressly discuss electronic communications that recommend investment strategies, the NASD suitability rule continues to apply to the recommendation of investment strategies, whether that recommendation is made via electronic communication or otherwise.”⁴²

A number of SEC decisions also support application of the suitability rule to recommended strategies. The case often cited as standing for such a proposition is F.J. Kaufman & Co., 50 S.E.C. 164 (1989), in which the SEC found that the respondent violated NASD Rule 2310 by recommending an unsuitable strategy to customers. A number of Commission decisions issued after Kaufman also lend support for applying the

⁴¹ See Notice to Members 96-32, 1996 NASD LEXIS 51, at *2 (May 1996); see also Notice to Members 05-68, 2005 NASD LEXIS 44, at *11 (Oct. 2005) (stating that members and their associated persons “should perform a careful analysis to determine whether liquefying home equity is a suitable strategy for an investor”); Notice to Members 04-89, 2004 NASD LEXIS 76, at *7 (Dec. 2004) (same).

⁴² See Securities Exchange Act Release No. 44178, 2001 SEC LEXIS 731, at *28-29 (April 12, 2001), 66 FR 20697, 20702 (April 24, 2001) (Notice of Filing and Immediate Effectiveness of FINRA’s Online Suitability Policy Statement).

suitability rule to recommended strategies in certain situations. Many of these cases involved recommendations to purchase securities on margin (which can be viewed as a strategy).⁴³

The proposed suitability rule explicitly covers recommended strategies. The commenters' views on the inclusion of the term were varied.

o Comments

A number of commenters supported the addition of the term to the rule text.⁴⁴ Some commenters requested that FINRA make clear in the supplementary material that the term “strategy” should be interpreted broadly and include recommendations to hold an investment.⁴⁵ Some of these commenters also believed that firms should have an affirmative duty to review portfolios that are transferred into a firm and that the lack of a

⁴³ See, e.g., Jack H. Stein, Securities Exchange Act Release No. 47335, 2003 SEC LEXIS 338, at *15 (Feb. 10, 2003); Justine S. Fischer, 53 S.E.C. 734 (1998); Stephen T. Rangen, 52 S.E.C. 1304, 1307-1308 (1997); Arthur J. Lewis, 50 S.E.C. 747, 748-50 (1991).

⁴⁴ See Barbara Black, Director of the Corporate Law Center of the University of Cincinnati College of Law, and Jill I. Gross, Director of the Investor Rights Clinic of the Pace University School of Law (“Corporate Law Center & Investor Rights Clinic”), June 29, 2009; Peter J. Harrington, Christine Lazaro & Lisa A. Catalano, Securities Arbitration Clinic at St. John’s University, June 25, 2009 (“St. John’s Letter”); William A. Jacobson and Sang Joon Kim, Cornell Securities Law Clinic, June 27, 2009 (“Cornell Letter”); Sarah McCafferty, Vice President and Chief compliance Officer at T.RowePrice, June 29, 2009 (“T.RowePrice Letter”); Peter J. Mougey and Kristian P. Kraszewski, Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor P.A., June 29, 2009 (“Mougey and Kraszewski Letter”); Daniel C. Rome, General Counsel of Taurus Compliance Consulting LLC, June 29, 2009 (“Taurus Letter”).

⁴⁵ See Cornell Letter, supra note 44; Mougey and Kraszewski Letter, supra note 44; St. John’s Letter, supra note 44.

recommendation to make any changes to the portfolio effectively constitutes an implicit recommendation to retain what is in the account.⁴⁶

Other commenters supported the inclusion of the term strategy but asked FINRA to clarify that the suitability rule would apply only to recommended “strategies resulting in the purchase, sale or exchange of a security or securities”⁴⁷ or where there is a “reasonable nexus between the recommended investment strategy and a securities transaction in furtherance of the recommended strategy.”⁴⁸ Other commenters stated that FINRA should define or clarify the term “strategy.”⁴⁹ One of these commenters believed that, without a definition, there would be confusion among firms and FINRA examiners regarding whether all asset allocation programs and “buy and hold” recommendations should be viewed as strategies.⁵⁰

⁴⁶ See Mougey and Kraszewski Letter, supra note 43; St. John’s Letter, supra note 44.

⁴⁷ See Bari Havlik, SVP and Chief Compliance Officer for Charles Schwab & Co., June 29, 2009 (“Charles Schwab Letter”).

⁴⁸ See Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, June 29, 2000 (“SIFMA Letter”); NSCP Letter, supra note 35.

⁴⁹ See NSCP Letter, supra note 35. A number of commenters stated that FINRA should eliminate the term strategy from the rule but argued that, if FINRA continues to use it, FINRA needed to clarify what the term means. See Committee of Annuity Insurers Letter, supra note 35; James Livingston, President and CEO of National Planning Holdings, Inc., June 29, 2009 (“National Planning Holdings”); Stephanie L. Brown, Managing Director and General Counsel for LPL Financial Corporation, June 29, 2009 (“LPL Letter”).

⁵⁰ See NSCP Letter, supra note 35.

A number of commenters opposed the inclusion of the term “strategy.”⁵¹

However, one of these commenters stated that, if FINRA includes the term in the final proposal, FINRA should except from the rule’s coverage any information determined to be “investment education” under the Employee Retirement Income Security Act (“ERISA”).⁵²

O FINRA’s Response

FINRA agrees that the term “strategy” should be included in the rule language and that, in general, it should be interpreted broadly. For instance, FINRA rejects the contention that the rule should only cover a recommended strategy if it results in a transaction. As with the current suitability rule, application of the proposed rule would be triggered when the broker-dealer or associated person recommends the security or strategy regardless of whether the recommendation results in a transaction.⁵³ The term “strategy,” moreover, would cover explicit recommendations to hold a security or securities. The rule recognizes that customers may rely on members’ and associated persons’ investment expertise and knowledge, and it is thus appropriate to hold members and associated persons responsible for the recommendations that they make to customers,

⁵¹ See LPL Letter, supra note 48; Committee of Annuity Insurers Letter, supra note 34; Clifford E. Kirsch, Sutherland Asbill & Brennan LLP on behalf of John Hancock Life Insurance Co., MetLife Inc., and the Prudential Insurance Co. of America, June 29, 2009 (“Hancock, MetLife and Prudential Letter”); National Planning Holdings, supra note 49.

⁵² See Hancock, MetLife and Prudential Letter, supra note 51 (citing 29 CFR 2509.96-1(d)).

⁵³ See, e.g., Dist. Bus. Conduct Comm. v. Nickles, Complaint No. C8A910051, 1992 NASD Discip. LEXIS 28, at *18 (NBCC Oct. 19, 1992) (holding that suitability rule “applies not only to transactions that registered persons effect for their clients, but also to any recommendations that a registered person makes to his or her client”).

regardless of whether those recommendations result in transactions or generate transaction-based compensation.

In regard to the comment concerning implicit recommendations on portfolios transferred to a firm, FINRA notes that nothing in the current rule proposal is intended to change the longstanding application of the suitability rule on a recommendation-by-recommendation basis. In limited circumstances, FINRA and the SEC have recognized that implicit recommendations can trigger suitability obligations. For example, FINRA and the SEC have held that associated persons who effect transactions on a customer's behalf without informing the customer have implicitly recommended those transactions, thereby triggering application of the suitability rule.⁵⁴ The rule proposal is not intended to broaden the scope of implicit recommendations.

As discussed in Item 3 of this rule filing, FINRA also proposes to explicitly exempt from the rule's coverage certain categories of educational material as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities. FINRA believes that it is important to encourage broker-dealers and associated persons to freely provide educational material and services to customers. As one commenter explained, the U.S. Department of Labor provided a similar exemption from some requirements under ERISA.⁵⁵

⁵⁴ See, e.g., Rafael Pinchas, 54 S.E.C. 331, 341 n.22 (1999) ("Transactions that were not specifically authorized by a client but were executed on the client's behalf are considered to have been implicitly recommended within the meaning of the NASD rules."); Paul C. Kettler, 51 S.E.C. 30, 32 n.11 (1992) (stating that transactions broker effects for a discretionary account are implicitly recommended).

⁵⁵ See Hancock, MetLife and Prudential Letter, supra note 51 (citing 29 CFR 2509.96-1(d)).

- Non-Securities Products

The current suitability rule and the proposed new suitability rule cover recommendations involving securities. In the Notice seeking comment, however, FINRA asked whether the suitability rule should cover recommendations of non-securities products made in connection with the firm's business. This issue generated the greatest number of comments, most of which were against extending the rule's reach.

- o Comments

Some commenters favored broadening the suitability rule so that it covers non-securities products.⁵⁶ One commenter stated that the expansion was needed because broker-dealers market more than just securities and oftentimes customers do not understand that they may be afforded less protection when purchasing non-securities products.⁵⁷ Another commenter stated that it would be unreasonable for a firm to allow a non-securities recommendation that was inconsistent with a customer's suitability profile.⁵⁸ Yet another commenter believed that broker-dealers implicitly already have similar obligations but favored explicitly applying the suitability rule to non-securities products.⁵⁹ According to this commenter, broker-dealers 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

⁵⁶ See Mougey and Kraszewski Letter, supra note 44; Taurus Letter, supra note 44.

⁵⁷ See Mougey and Kraszewski Letter, supra note 44.

⁵⁸ See Taurus Letter, supra note 44.

⁵⁹ See Corporate Law Center & Investor Rights Clinic, supra note 44.

strategy to their customers.⁶⁰ This commenter argued that the proposal was not an expansion of broker-dealer obligations; rather the proposal would make explicit what FINRA's rules have consistently required from broker-dealers and associated persons.⁶¹ The commenter supported a revision of proposed Rule 2111 to incorporate an explicit suitability obligation that is not limited to securities.⁶²

The vast majority of commenters, however, were against applying the suitability rule to non-securities products.⁶³ Some argued that FINRA did not have jurisdiction over

⁶⁰ See Corporate Law Center & Investor Rights Clinic, supra note 44.

⁶¹ See Corporate Law Center & Investor Rights Clinic, supra note 44.

⁶² See Corporate Law Center & Investor Rights Clinic, supra note 44.

⁶³ See, e.g., Michael Berenson, Morgan, Lewis & Bockius LLP on behalf of American Equity Life Insurance Company, June 23, 2009 ("AELIC Letter"); Charles Schwab Letter, supra note 47; Committee of Annuity Insurers Letter, supra note 35; John M. Damgard, President of the Futures Industry Association, June 29, 2009 ("FIA Letter"); Form Letter Type A, supra note 35; Form Letter Type B, supra note 35; Hancock, MetLife and Prudential Letter, supra note 51; James L. Harding, James L. Harding & Associates, Inc., July 1, 2009 ("Harding Letter"); Mike Hogan, President and CEO of FOLIOfn Investments, Inc., June 29, 2009 ("FOLIOfn Letter"); Ronald C. Long, Director of Regulatory Affairs for Wells Fargo Advisors, LLC, June 29, 2009 ("Wells Fargo Letter"); LPL Letter, supra note 51; John S. Markle, Deputy General Counsel for TD Ameritrade, June 29, 2009 ("TD Ameritrade Letter"); NSCP Letter, supra note 35; Lisa Roth, National Ass'n of Independent Broker-Dealers, Inc., June 29, 2009 ("NAIBD Letter"); Thomas W. Sexton, Senior Vice President & General Counsel for the National Futures Association, June 29, 2009 ("NFA Letter"), SIFMA Letter, supra note 48; T.RowePrice Letter, supra note 44; Robert R Carter and David A Stertz, Association for Advanced Life Underwriting, June 29, 2009 ("AALU Letter"); Alan J Cyr, Cyr & Cyr Insurance Services, June 26, 2009 ("Cyr & Cyr Insurance Services Letter"); F. John Millette, IMG Financial Group, June 23, 2009 ("IMG Financial Group Letter"); Neal Nakagiri, NPB Financial Group, LLC, June 2, 2009 ("NPB Financial Group Letter"); Richard C. Orvis, Principal Life Insurance Co., June 23, 2009 ("Principal Life Insurance Co. Letter").

non-securities products.⁶⁴ Some argued against the expansion because they claimed there is no evidence of abuse resulting from recommendations involving non-securities products.⁶⁵ Some commenters stated that such action is unnecessary because the states and federal regulators, and in some instances other self-regulatory organizations, already regulate many non-securities products and services (e.g., insurance, real estate, investment advisers, futures products, etc.).⁶⁶ Others claimed that FINRA was ill-suited to regulate non-securities products because it has no expertise outside securities issues.⁶⁷ A few argued that adoption of an enhanced suitability rule would create confusion regarding whether a recommendation is made “in connection with a firm’s business.”⁶⁸

o FINRA’s Response

With the possible exception of potentially duplicative regulation, which FINRA believes could be addressed in any further expansion of the reach of the rule, FINRA does not agree with the commenters’ reasoning against extending the scope of the

⁶⁴ See, e.g., Committee of Annuity Insurers Letter, supra note 35; FOLIOfn Letter, supra note 63; Form Letter Type A, supra note 35; Form Letter Type B, supra note 35; Hancock, MetLife and Prudential Letter, supra note 51; LPL Letter, supra note 49; NSCP Letter, supra note 35; T.RowePrice Letter, supra note 44.

⁶⁵ See, e.g., AALU Letter, supra note 63; AELIC Letter, supra note 63; Cyr & Cyr Insurance Services Letter, supra note 60; Principal Life Insurance Co. Letter, supra note 60.

⁶⁶ See, e.g., AELIC Letter, supra note 63; Committee of Annuity Insurers Letter, supra note 35; FIA Letter, supra note 63; Form Letter Type A, supra note 35; Form Letter Type B, supra note 35; Hancock, MetLife and Prudential Letter, supra note 51; Michael T. McRaith, Illinois Department of Insurance Letter, June 29, 2009; NAIBD Letter, supra note 63; NFA Letter, supra note 63; NSCP Letter, supra note 35; SIFMA Letter, supra note 48.

⁶⁷ See, e.g., AALU Letter, supra note 63; Committee of Annuity Insurers Letter, supra note 35; Wells Fargo Letter, supra note 63.

⁶⁸ See, e.g., AELIC Letter, supra note 63.

suitability rule. FINRA acknowledges, however, that future developments in regulatory restructuring could impact any such proposal. FINRA emphasizes, moreover, that the proposed new suitability rule (including the explicit coverage of recommended strategies and expanded list of the types of information that members must seek to gather and analyze) and the proposed “Know Your Customer” rule together provide enhanced protection to investors. Consequently, FINRA will not include explicit references to non-securities products in the rule at this time.

- Clarification of the Term “Recommendation”

Consistent with the current suitability rule, the proposed new rule does not define the term “recommendation.” FINRA received a number of comments regarding the term.

- o Comments

Some commenters asked FINRA to define the term “recommendation.”⁶⁹ One commenter believed that FINRA’s failure to define “recommended transaction” will make it difficult for firms to distinguish recommended transactions from “discussed” and/or “reviewed” transactions.⁷⁰ This commenter stated that the “current 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.’”⁷¹ The commenter believes that “the discussion in NTM 01-23 provides a good foundation upon which FINRA can base the definition.”⁷² Another commenter

⁶⁹ See Barry D. Estell, Attorney at Law, June 24, 2009 (“Estell Letter”); FOLIOfn Letter, supra note 63; Mougey and Kraszewski Letter, supra note 44.

⁷⁰ See FOLIOfn Letter, supra note 63.

⁷¹ See FOLIOfn Letter, supra note 63.

⁷² See FOLIOfn Letter, supra note 63.

asked that FINRA reaffirm the principles discussed in NTM 01-23 regarding the term “recommendation.”⁷³ Other commenters argued that the term should be defined to include recommendations to hold securities.⁷⁴

o FINRA’s Response

The determination of the existence of a recommendation has always been based on the facts and circumstances of the particular case and, therefore, the fact of such action having taken place is not susceptible to a bright line definition.⁷⁵ As two commenters noted, however, FINRA announced several guiding principles in NTM 01-23 regarding whether a communication constitutes a recommendation. In general, those guiding principles remain relevant.

For instance, FINRA stated that a communication’s content, context, and presentation are important aspects of the inquiry. In addition, the more individually tailored the communication is to a particular customer or customers about a specific security or strategy, the more likely the communication will be viewed as a recommendation. FINRA also explained that a series of actions that may not constitute recommendations when viewed individually may amount to a recommendation when considered in the aggregate. FINRA stated, moreover, that it makes no difference whether the communication was initiated by a person or a computer software program.

⁷³ TD Ameritrade Letter, supra note 63.

⁷⁴ See Estell Letter, supra note 69; Mougey and Kraszewski Letter, supra note 44.

⁷⁵ FINRA has stated that "defining the term 'recommendation' is unnecessary and would raise many complex issues in the absence of specific facts of a particular case." Securities Exchange Act Release No. 37588, 1996 SEC LEXIS 2285, at *29 (Aug. 20, 1996), 61 FR. 44100, 44107 (Aug. 27, 1996) (Notice of Filing and Order Granting Accelerated Approval of NASD’s Interpretation of its Suitability Rule).

Finally, FINRA noted the relevance of determining whether a reasonable person would view the communication as a recommendation. Thus, for example, FINRA explained that a broker could not avoid suitability obligations through a disclaimer where—given its content, context, and presentation—the particular communication reasonably would be viewed as a recommendation.⁷⁶

These guiding principles, together with numerous litigated decisions and the facts and circumstances of any particular case, inform the determination of whether the communication is a recommendation for purposes of FINRA’s suitability rule.⁷⁷ FINRA believes that this guidance and these precedents allow broker-dealers to fundamentally understand what communications likely do or do not constitute recommendations.

⁷⁶ In the same vein, it is important to note that a customer’s acquiescence or desire to engage in a transaction does not relieve a broker-dealer or associated person of the responsibility to make only suitable recommendations. See, e.g., Clinton H. Holland, Jr., 52 S.E.C. 562, 566 (1995) (“Even if we conclude that Bradley understood Holland’s recommendations and decided to follow them, that does not relieve Holland of his obligation to make reasonable recommendations.”), aff’d, 105 F.3d 665 (9th Cir. 1997) (table format); John M. Reynolds, 50 S.E.C. 805, 809 (1991) (regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent with the customer’s financial condition); Eugene J. Erdos, 47 S.E.C. 985, 989 (1983) (“[W]hether [the customer] considered the transactions ... suitable is not the test for determining the propriety of [the registered representative’s] conduct.”), aff’d, 742 F.2d 507 (9th Cir. 1984); Dep’t of Enforcement v. Bendetsen, No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004) (“[A] broker’s recommendations must serve his client’s best interests and that the test for whether a broker’s recommendation is suitable is not whether the client acquiesced in them, but whether the broker’s recommendations were consistent with the client’s financial situation and needs.”).

⁷⁷ To the extent that past Notices to Members, Regulatory Notices, case law, etc., do not conflict with proposed new rule requirements or interpretations thereof, they remain potentially applicable, depending on the facts and circumstances of the particular case.

It also is important to emphasize that both the current and proposed suitability rules require that a recommendation be suitable when made. Firms may have different methods of tracking recommendations for a variety of reasons, but the main suitability obligation is not dependent on whether and, if so, where and how, a transaction occurs.⁷⁸

Finally, as noted above, the proposed rule would capture explicit recommendations to hold securities as a result of FINRA's elimination of the "purchase, sale or exchange" language and the addition of the term "strategy." Accordingly, there is no reason to define "recommendation" to include recommendations to hold securities.

Information Gathering

The proposal discussed in the Notice seeking comment made two changes to the type of information that firms and associated persons had to attempt to gather and analyze as part of their suitability obligation. First, the proposal would have required the firm and associated person to consider information known by the firm or associated person. Second, the proposal included an expanded list of information that members and associated persons would have to attempt to gather and analyze when making recommendations.

- Information Known By the Firm

The proposal discussed in the Notice would have required members and associated persons to consider all information about the customer that was "known by the member or associated person."

⁷⁸ See Nickles, 1992 NASD Discip. LEXIS 28, at *18.

O Comments

Some commenters supported requiring firms and brokers to analyze information known by the firm regardless of how the firm learned of the information.⁷⁹ However, other commenters were opposed to this requirement.⁸⁰ Some were opposed because of the difficulty they believed it would cause for firms with multiple business lines.⁸¹ According to these commenters, customers may provide information for a variety of different purposes (e.g., banking, insurance, or securities transactions) to different employees working in different departments and recording the information on separate systems, and a single broker may not have access to all of that information.⁸²

Other commenters opposed the language on the basis that it might require associated persons to capture and consider personal information that may not be relevant to investment decisions and that clients may not want captured in a system or shared with a broader audience (especially when the associated person has intimate knowledge of a client through a family relationship or friendship).⁸³ According to the commenters, examples may include a diagnosed illness, pending divorce or separation, pending legal

⁷⁹ See Corporate Law Center & Investor Rights Clinic, supra note 44; St. John's Letter, supra note 44; Taurus Letter, supra note 44.

⁸⁰ See Charles Schwab Letter, supra note 47; Committee of Annuity Insurers Letter, supra note 35; FOLIOfn Letter, supra note 63; LPL Letter, supra note 49; NSCP Letter, supra note 35; SIFMA Letter, supra note 47; TD Ameritrade Letter, supra note 63.

⁸¹ See Charles Schwab Letter, supra note 47; FOLIOfn Letter, supra note 63; NSCP Letter, supra note 35; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63.

⁸² See Charles Schwab Letter, supra note 47; SIFMA Letter, supra note 48.

⁸³ See Committee of Annuity Insurers Letter, supra note 35; National Planning Holdings, supra note 49.

action, or other personal problems.⁸⁴ Finally, some commenters believed that such a requirement could be unfair to associated persons in situations where firms are aware of information about customers but do not pass it along to the associated persons.⁸⁵

o FINRA's Response

FINRA has modified the proposal and no longer refers to facts “known by the member or associated person.” The current proposal requires the member or associated person to have reasonable grounds to believe the recommendation is suitable based on “information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to, 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 customer may disclose to the member or associated person in connection with such recommendation.”

“Reasonable diligence” is that level of effort that, based on the facts and circumstances of the particular case, provides the member or associated person with sufficient information about the customer to have reasonable grounds to believe that the recommended security or strategy is suitable. The level of importance of each category of customer information may vary depending on the facts and circumstances of the particular case. However, members and associated persons must use reasonable diligence to gather and analyze the customer information and may only make a recommendation if they have reasonable grounds to believe the recommendation is suitable. In this regard,

⁸⁴ See Committee of Annuity Insurers Letter, supra note 35; National Planning Holdings, supra note 49.

⁸⁵ See LPL Letter, supra note 49; SIFMA Letter, supra note 48.

failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability, which requires a broker-dealer to have a reasonable basis to believe a recommendation is suitable for the particular investor at issue.

Apart from the new “reasonable diligence” language, the modified proposal also alters the wording at the end of paragraph (a) of the proposed rule. Instead of requiring members and associated persons to consider “any other information the member or associated person considers to be reasonable,” the modified proposal requires them to consider “any other information the customer may disclose to the member or associated person in connection with” the recommendation. In light of some of the comments noted above, FINRA believes it is important to tie this customer information to possible investment decisions.

- Additional Information

The proposal expands the explicit list of types of information that broker-dealers and associated persons have to attempt to gather and analyze. At present, the suitability rule requires that broker-dealers and associated persons attempt to gather information about and analyze the customer’s other security holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer. FINRA expanded that list to include the customer’s age, investment experience, investment time horizon, liquidity needs, and risk tolerance.

O Comments

Some commenters applauded FINRA for placing a clear affirmative duty on firms to make reasonable efforts to gather a more comprehensive and specific list of facts about the customer prior to making a recommendation.⁸⁶ These commenters believed that the investing public will benefit because broker-dealers will consider a larger number of consistent criteria.⁸⁷

A few other commenters, while agreeing that such information is relevant in some situations, stated that obtaining each specified category of information may not be warranted on every occasion.⁸⁸ These commenters requested that FINRA build flexibility into the rule and not mandate that the member seek to obtain these new categories of information for every recommended transaction.⁸⁹ According to these commenters, broker-dealers should have discretion to determine what customer information is relevant to the suitability determination associated with each recommended transaction.⁹⁰ If FINRA does require firms to obtain and capture this information, these commenters also asked FINRA to establish an effective date for the new rule that recognizes the difficulty

⁸⁶ See Corporate Law Center & Investor Rights Clinic, supra note 44; Mougey and Kraszewski Letter, supra note 44; St. John's Letter, supra note 44; T.RowePrice Letter, supra note 44.

⁸⁷ See St. John's Letter, supra note 44; Mougey and Kraszewski Letter, supra note 44.

⁸⁸ See Charles Schwab Letter, supra note 47; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; Wells Fargo Letter, supra note 63.

⁸⁹ See Charles Schwab Letter, supra note 47; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; Wells Fargo Letter, supra note 63.

⁹⁰ See Charles Schwab Letter, supra note 47; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; Wells Fargo Letter, supra note 63.

associated with developing, modifying, and implementing forms and systems to request and capture the proposed new categories of information.⁹¹

Other commenters more strongly objected to the proposed expansion of the list of items that broker-dealers must attempt to gather and analyze.⁹² One commenter argued that factors such as a customer's investment experience, time horizon, and risk tolerance are ones to be considered when reviewing a customer's portfolio as a whole, not individual trades.⁹³ According to this commenter, requiring consideration of such factors on a trade-by-trade basis will prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk, and time horizons.⁹⁴ This commenter also stated that requiring firms to attempt to gather information about a customer's "other investments" would be difficult because it would require an associated person to have a complete view of a customer's entire portfolio.⁹⁵ Another commenter went further and stated that the current list of items in Rule 2310 should be abolished.⁹⁶ The commenter stated that "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

⁹¹ See Charles Schwab Letter, supra note 47; LPL Letter, supra note 49; SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

⁹² See FOLIOfn Letter, supra note 63.

⁹³ See LPL Letter, supra note 49.

⁹⁴ See LPL Letter, supra note 49.

⁹⁵ See LPL Letter, supra note 49.

⁹⁶ See FOLIOfn Letter, supra note 63.

consumers.”⁹⁷ If that cannot be achieved, the commenter recommends limiting the information to that discussed in SEA Rule 17a-3.⁹⁸ This commenter also argued that FINRA should detail exactly how firms are required to use each piece of information that FINRA requires firms to gather.⁹⁹

Another commenter stated that FINRA should maintain a standard approach to the terminology used in relation to this aspect of the rule.¹⁰⁰ As an example, the commenter noted that the rule proposal uses the term “other investments,” while FINRA Rule 2330 covering deferred variable annuities uses “existing assets (including investment and life insurance holdings).”¹⁰¹ The commenter believed that “other investments” is overly broad and that FINRA should use the term currently used in Rule 2330.¹⁰²

Finally, one commenter argued that money market mutual funds be exempted from all or some of the requirements to gather information when making recommendations.¹⁰³ According to the commenter, a current exemption from some

⁹⁷ See FOLIOfn Letter, supra note 63.

⁹⁸ See FOLIOfn Letter, supra note 63.

⁹⁹ See FOLIOfn Letter, supra note 63.

¹⁰⁰ See National Planning Holdings, supra note 49.

¹⁰¹ See National Planning Holdings, supra note 49.

¹⁰² See National Planning Holdings, supra note 49.

¹⁰³ See Tamara K. Salmon, Senior Associate Counsel for the Investment Company Institute, June 29, 2009 (“ICI Letter”).

information gathering for transactions in money market mutual funds should continue or be expanded in the proposed rule.¹⁰⁴

O FINRA's Response

Under the current suitability rule, broker-dealers must attempt to gather information on and analyze the customer's other holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by the firm or associated person in making recommendations to the customer. The expanded information in the proposed rule includes the customer's age, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA cannot dictate exactly how firms should use each piece of information. As discussed above, the level of importance of each category of customer information (not only those in the expanded list) may vary depending on the facts and circumstances of the particular case. However, failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability.

FINRA declines one commenter's request to exempt money market mutual funds from all or some of the requirements to gather information when making recommendations. By way of background, the original suitability rule (currently paragraph (a) of NASD Rule 2310) required firms and brokers to have reasonable grounds to believe that the recommendation to purchase, sell, or exchange any security is suitable based upon the facts, if any, disclosed by the customer as to "his other security holdings and as to his financial situation and needs." In 1990, the SEC approved

¹⁰⁴ See ICI Letter, supra note 103.

amendments that created a second information-gathering requirement (currently paragraph (b) of NASD Rule 2310).¹⁰⁵ The new paragraph added in 1990 required firms to make reasonable efforts to also obtain the customer's financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer. Transactions involving money market mutual funds were exempted from the requirement under the new paragraph. However, transactions involving money market mutual funds were not exempted from the original suitability requirements under paragraph (a). FINRA believes that recommended money market mutual funds should be subject to the same information-gathering requirements as other recommended securities. That is especially true in light of the problems experienced by the Reserve Primary Fund in late 2008.¹⁰⁶

Institutional Customer

At present, IM-2310-3 provides a limited exemption from the customer-specific obligation when dealing with institutional customers in certain situations. The proposal continues to provide an exemption, but it adds a requirement that institutional customers provide affirmative acknowledgement of certain aspects of their relationship with the broker-dealer and modifies the definition of institutional customer.

¹⁰⁵ See Securities Exchange Act Release No. 27982, 1990 SEC LEXIS 795 (May 2, 1990) (Order Approving Rule Change to Obtain Information Pertinent to Customer Account).

¹⁰⁶ As the SEC explained, "On Sept. 15, 2008, the Reserve Primary Fund, which held \$785 million in Lehman-issued securities, became illiquid when the fund was unable to meet investor requests for redemptions. The following day, the Reserve Fund declared it had 'broken the buck' because its net asset value had fallen below \$1 per share." <http://www.sec.gov/news/press/2010/2010-16.htm>.

- Affirmative Acknowledgement Regarding Surrendering Rights

As with the current suitability rule, the proposal provides an exemption from customer-specific suitability regarding institutional customers if the broker-dealer or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently and is exercising independent judgment in evaluating the member's or associated person's recommendations. However, the proposal discussed in the Notice seeking comment added as a third requirement that the institutional customer must affirmatively indicate that it is willing to forego the protection of the customer-specific obligation of the suitability rule.

- o Comments

A number of commenters stated that requiring institutional customers to affirmatively acknowledge that they are giving up rights is impractical and will render the institutional exemption ineffective.¹⁰⁷ According to these commenters, this requirement is unnecessary in light of the other two conditions (that the customer be capable of evaluating risks and is exercising independent judgment).¹⁰⁸ The commenters also stated that, because institutional clients are highly unlikely to affirmatively forego suitability protections for commercial reasons, this new requirement will have the practical effect of negating the exemption.¹⁰⁹

¹⁰⁷ See Hancock, MetLife and Prudential Letter, supra note 51; NAIBD Letter, supra note 63; NSCP Letter, supra note 35; SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

¹⁰⁸ See NAIBD Letter, supra note 63; SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

¹⁰⁹ See Hancock, MetLife and Prudential Letter, supra note 51; NAIBD Letter, supra note 63; NSCP Letter, supra note 35; SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

o FINRA's Response

FINRA has modified the proposed exemption in a way that should alleviate commenters' concerns while providing the necessary protection to institutional customers. The revised exemption eliminates the requirement that institutional customers affirmatively indicate that they are giving up suitability protections and focuses on the two main conditions discussed in the current exemption. The revised exemption, however, does require institutional customers to affirmatively indicate that they are exercising independent judgment.

▪ Change in Definition

The proposal harmonizes the definition of "institutional customer" in the suitability rule with the more common definition of "institutional account" in NASD Rule 3110(c)(4) [proposed FINRA Rule 4512(c)]. As a result, the monetary threshold for an institutional customer would increase from the current \$10 million invested in securities and/or under management to \$50 million in assets. In addition, unlike the current exemption, a natural person could qualify as an institutional customer under the proposal.

o Comments

Some commenters supported the change in definition.¹¹⁰ One commenter stated further that consistent standards produce more efficient, effective, and clear regulation that is beneficial to investors, regulators, and market participants alike.¹¹¹ Other commenters, however, disagreed, arguing that the definition of \$10 million invested in securities and/or under management in current IM-2310-3 is a more appropriate standard

¹¹⁰ See SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

¹¹¹ See SIFMA Letter, supra note 48.

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.¹¹² According to one commenter, many highly sophisticated institutional brokerage customers would not satisfy the \$50 million dollar asset threshold but would not need the protection of the suitability rule.¹¹³

Another commenter who favored keeping the current standard stated that, if FINRA believes a different standard should be used for uniformity, FINRA should use the definition in NASD Rule 2211(a)(3) (Communications with the Public) rather than the one in NASD Rule 3110(c)(4).¹¹⁴ Under NASD Rule 2211, institutional sales material may be distributed only to “institutional investors,” defined to include several categories of persons, including those identified in NASD Rule 3110(c)(4). It also 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. This commenter also suggested that FINRA should make the standard a rebuttable presumption against determining that an entity that is outside the list of plans identified above is an institutional customer.¹¹⁵

¹¹² See Hancock, MetLife and Prudential Letter, supra note 51; NAIBD Letter, supra note 63; NSCP Letter, supra note 35.

¹¹³ See NAIBD Letter, supra note 63.

¹¹⁴ See Hancock, MetLife and Prudential Letter, supra note 51.

¹¹⁵ See Hancock, MetLife and Prudential Letter, supra note 51. In addition, one commenter stated that the exemption should apply to all suitability obligations and should not, as previously had been the case, be limited to customer-specific suitability. See SIFMA Letter, supra note 48. FINRA believes that the exemption should remain focused on customer-specific suitability. For instance, it remains

Finally, one commenter argued that there should not be any exemption for institutional customers.¹¹⁶ According to this commenter, many institutional customers, even those with \$50 million in assets, are not particularly sophisticated about complex securities and need the protections of the suitability rule.¹¹⁷

O FINRA's Response

While any standard is imperfect, FINRA believes that it is important to use the definition in Rule 3110(c)(4) for consistency and because of its higher monetary threshold. FINRA does not believe that it is appropriate to use the much broader definition in NASD Rule 2211(a)(3), which defines "institutional investor" for purposes of the rules governing communications with the public. Communications that are distributed or made available only to institutional investors qualify as institutional sales material, which is not subject to the same content, principal approval and filing requirements as communications that are distributed or made available to retail investors. The communication rules' requirements, while important, serve a different purpose than the sales-practice protections that the suitability rule provides when a broker-dealer recommends a security to a customer.

FINRA understands the concern that even some institutional customers with \$50 million in assets might be unsophisticated about complex securities and need the protections of the suitability rule. However, the exemption would not apply in that circumstance. Again, the broker-dealer or associated person must have a reasonable basis

important that brokers understand the securities they recommend and that those securities are appropriate for at least some investors.

¹¹⁶ See Mougey and Kraszewski Letter, supra note 44.

¹¹⁷ See Mougey and Kraszewski Letter, supra note 44.

to believe that the institutional customer is capable of evaluating investment risks independently and, under the modified proposal, the customer must affirmatively state that it is exercising independent judgment in evaluating the recommendations.

- Eliminating Detailed Discussion from IM-2310-3

Although the focus is the same, the proposed institutional exemption is considerably shorter in length than the current one. Its brevity generated one comment.

- o Comments

One commenter viewed the new, abbreviated institutional investor discussion in the proposal as a “box check” waiver that provides less protection than the detailed discussion in IM-2310-3 of considerations for determining whether the exemption should apply.¹¹⁸

- o FINRA’s Response

The proposed institutional investor discussion, while shorter than the current version in IM-2310-3, contains certain stricter standards. In addition to the two main considerations used in both versions, the proposal includes an increased monetary threshold that certain institutions must meet to qualify for the exemption and, even more important, a requirement that the institution affirmatively indicate that it is independently evaluating the firm’s recommendations.

Supplementary Material

The Consolidated FINRA Rulebook uses supplementary material to discuss certain aspects of a rule’s requirements in greater detail. However, a number of commenters raised issues regarding the supplementary material.

¹¹⁸ See NASAA Letter, supra note 34.

- Comments

A number of commenters supported codifying various interpretations of the suitability rule.¹¹⁹ Some commenters, however, believed that FINRA should modify some of those interpretations. For instance, one commenter questioned the “three-pronged approach” to suitability discussed in Supplementary Material .02, which codifies discussions in IMs and case law about reasonable-basis suitability, customer-specific suitability, and quantitative suitability. This commenter suggested that the approach created new standards that provide less protection to customers.¹²⁰ This commenter took particular issue with reasonable-basis suitability, which requires a broker-dealer to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors.¹²¹ The commenter believed that a member’s familiarity with a product should be presumed.¹²²

Two other comments focused on quantitative suitability, which requires a broker-dealer that has actual or de facto control over an 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 investment profile. These commenters believed that FINRA should eliminate the requirement under quantitative suitability that a broker-dealer have

¹¹⁹ See Corporate Law Center & Investor Rights Clinic, supra note 44; Taurus Letter, supra note 44; T.RowePrice Letter, supra note 44.

¹²⁰ See NASAA Letter, supra note 34.

¹²¹ See NASAA Letter, supra note 34.

¹²² See NASAA Letter, supra note 34.

“control” over an account before the obligation applies.¹²³ Yet another commenter stated that FINRA should eliminate supplementary material from all rules and limit rulemaking to rule text.¹²⁴

▪ FINRA’s Response

FINRA believes that supplementary material is an important means of providing greater specificity to a rule’s overarching requirements. FINRA notes that supplementary material will be filed with the SEC and is enforceable to the same extent as the main rule text.

With regard to the codification of the main suitability obligations, FINRA disagrees with the contention that the discussion creates new standards that provide less protection to customers. The discussion at issue codifies existing interpretations of suitability obligations, often directly from IMs following NASD Rule 2310¹²⁵ and case law.¹²⁶ The commenter argued that presuming that firms and associated persons are

¹²³ See Cornell Letter, supra note 44; Estell Letter, supra note 69.

¹²⁴ See FOLIOfn Letter, supra note 63.

¹²⁵ See, e.g., IM-2310-2(b)(2) (discussing quantitative suitability, also called excessive trading); IM-2310-3 (discussing reasonable-basis and customer-specific suitability).

¹²⁶ See, e.g., James B. Chase, Securities Exchange Act Release No. 47476, 2003 SEC LEXIS 566, at *17 (Mar. 10, 2003) (involving customer-specific suitability); Harry Gliksman, 54 S.E.C. 471, 474-75 (1999) (discussing excessive trading); Rafael Pinchas, 54 S.E.C. 331 (1999) (discussing excessive trading and customer-specific suitability); F.J. Kaufman & Co., 50 S.E.C. 164, 168-69 (1989) (discussing both reasonable-basis and customer-specific suitability); Patrick G. Keel, 51 S.E.C. 282, 284-87 (1993) (upholding violation of customer-specific suitability); Dep’t of Enforcement v. Medeck, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *31 (NAC July 30, 2009) (discussing excessive trading); Dep’t of Enforcement v. Siegel, No. C05020055, 2007 NASD Discip. LEXIS 20, at *36-40 (NAC May 11, 2007) (discussing reasonable-basis suitability and due-diligence requirement thereunder), aff’d, Securities Exchange Act Release No.

familiar with the products they recommend would provide greater protection to customers. FINRA believes the opposite is true, and FINRA's examination and enforcement experience belies the notion that firms and associated persons are always familiar with every recommended product or strategy. The existing duty to perform adequate due diligence to understand the products and strategies that firms and associated persons recommend is of critical importance to the protection of investors.¹²⁷ This is especially true in light of the increasing complexity of certain products and strategies.

Elimination of Interpretive Material Following NASD Rule 2310

In connection with the new suitability rule, FINRA proposes eliminating many and modifying some of the IMs that follow NASD Rule 2310. This aspect of the proposal also generated several comments.

▪ Comments

A few commenters were concerned that the proposal did not include some of the current IMs, especially IM-2310-2.¹²⁸ These commenters believe that it is important to

58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), aff'd in relevant part, 592 F.3d 147 (D.C. Cir. Jan. 12, 2010), cert. denied, 2010 U.S. LEXIS 4340 (May 24, 2010); see also Regulatory Notice 10-22, 2010 FINRA LEXIS 43, at *10-20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); Notice to Members 03-71, 2003 NASD LEXIS 81, *5-6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

¹²⁷ See F.J. Kaufman & Co., 50 S.E.C. at 168-69 (discussing both reasonable-basis and customer-specific suitability); Siegel, 2007 NASD Discip. LEXIS 20, at *36-40 (discussing reasonable-basis suitability and due-diligence requirement thereunder); see also Regulatory Notice 10-22, 2010 FINRA LEXIS 43, at *10-20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); Notice to Members 03-71, 2003 NASD LEXIS 81, *5-6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

maintain the statement in IM-2310-2 that brokers can be disciplined for excessive trading, unauthorized trading, and fraud.¹²⁹ One commenter noted in particular that this IM was the only place in the entire NASD conduct rules explicitly prohibiting unauthorized trading.¹³⁰

▪ FINRA's Response

FINRA continues to believe that most of the current IMs following NASD Rule 2310 should be eliminated or modified because they are no longer necessary. As discussed in detail in Item II.A. of this filing, some are duplicative of other rules and others would be rendered unnecessary by changes proposed in the new suitability rule. For example, as noted in Item II.A., it is well-settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010. Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way alters the longstanding view that unauthorized trading clearly violates FINRA's rules.

KNOW YOUR CUSTOMER
(Proposed FINRA Rule 2090)

The proposal would require broker-dealers 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

¹²⁸ See Cornell Letter, supra note 44; Corporate Law Center & Investor Rights Clinic, supra note 44; NASAA Letter, supra note 34.

¹²⁹ See Cornell Letter, supra note 44; Corporate Law Center & Investor Rights Clinic, supra note 44; NASAA Letter, supra note 34.

¹³⁰ See Corporate Law Center & Investor Rights Clinic, supra note 44.

of such customer.” Although there were some comments generally in favor of the proposal,¹³¹ most comments addressed specific language, as discussed below.

Essential Facts

The proposal states that broker-dealers must attempt to learn the “essential facts” concerning every customer. Supplementary Material .01 that was discussed in the Notice seeking comment clarified that “facts ‘essential’ to ‘knowing the customer’ included the customer’s financial profile and investment objectives or policy.” That language generated a fairly large number of comments.

▪ Comments

A number of commenters argued that the collection of financial profile and investment objective information under the proposed “know your customer” rule is a new requirement and unnecessarily confuses “know your customer” obligations with suitability obligations.¹³² One commenter believed it would mislead customers into incorrectly thinking that a firm would only permit a customer to execute a self-directed transaction if it has determined that the transaction is appropriate for that customer.¹³³ Along those same lines, other commenters believed the requirement would be particularly problematic where a customer’s trading activity is self-directed or directed by an independent investment adviser because regulators or private litigants could seek to hold

¹³¹ See, e.g., Cornell Letter, supra note 44.

¹³² See Charles Schwab Letter, supra note 47; Matthew Farley, Drinker, Biddle & Reath LLP, June 29, 2009 (“Drinker Biddle Letter”); FOLIOfn Letter, supra note 63; NAIBD Letter, supra note 63; NSCP Letter, supra note 35; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; T.RowePrice Letter, supra note 44; Wells Fargo Letter, supra note 63.

¹³³ See T.RowePrice Letter, supra note 44.

firms accountable for permitting unsolicited customer trading activity that is inconsistent with the “know your customer” information that is on record at the firm.¹³⁴

Some of these commenters supported “know your customer” obligations, but believed they should be limited in scope to essential facts necessary to open the account – i.e., the identity and address of each account owner, 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.¹³⁵ Some commenters suggested removing proposed Supplementary Material .01 to Rule 2090 in its entirety and instead permitting 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.¹³⁶ Another commenter similarly stated that the information should be limited to an investor’s name, address, and tax identification number, which the commenter asserted was all the information that is needed to know the customer’s identity and to make a credit determination.¹³⁷

¹³⁴ See Charles Schwab Letter, supra note 47; Drinker Biddle Letter, supra note 132; FOLIOfn Letter, supra note 63; SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; Wells Fargo Letter, supra note 63. One commenter made the same claim in the context of clearing firms and also stated that 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. See Drinker Biddle Letter, supra note 132.

¹³⁵ See SIFMA Letter, supra note 48; Wells Fargo Letter, supra note 63.

¹³⁶ See SIFMA Letter, supra note 48; TD Ameritrade Letter, supra note 63; Wells Fargo Letter, supra note 63.

¹³⁷ See FOLIOfn Letter, supra note 63.

One commenter, however, believed that firms should have to make reasonable efforts to collect the types of information delineated in paragraph (a) of proposed Rule 2111.¹³⁸ This commenter indicated that each of those factors is essential to knowing the customer.¹³⁹ Others suggested that the term should be clarified.¹⁴⁰

▪ FINRA’s Response

After analyzing the comments, FINRA agrees with those commenters who stated that the “know your customer” obligation should remain flexible and that the extent of the obligation generally should depend on a particular firm’s business model, its customers, and applicable regulations. As a result, FINRA has modified proposed Supplementary Material .01 to FINRA Rule 2090 so that it is less prescriptive. That provision now states: “For purposes of this Rule, facts ‘essential’ to ‘knowing the customer’ are those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.”

Maintenance of Every Account

A few commenters focused on the “maintenance” aspect of the “know your customer” requirement.

¹³⁸ See Cornell Letter, supra note 44.

¹³⁹ See Cornell Letter, supra note 44.

¹⁴⁰ See Committee of Annuity Insurers Letter, supra note 35.

- Comments

Two commenters stated that the “maintenance” language was both new and vague and would lead to practical implementation issues, particularly in the retirement plan marketplace.¹⁴¹ The commenters stated that FINRA should provide more guidance on what it means by “maintenance” and an opportunity to comment if it keeps the term.¹⁴²

- FINRA’s Response

FINRA believes that it is self-evident that a broker-dealer must know its customers not only at account opening but also throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customer accounts. Since a broker-dealer’s relationship with its customers is dynamic, FINRA does not believe that it can prescribe a period within which broker-dealers must attempt to update this information. Firms should verify the essential facts about customers at intervals reasonably calculated to prevent and detect any mishandling of customer accounts that might result from changes to the “essential facts” about the customers.¹⁴³ The reasonableness of a broker-dealer’s efforts in this regard will depend on the facts and circumstances of the particular case.

Not Applicable to Every Order

¹⁴¹ See Committee of Annuity Insurers Letter, supra note 35; Hancock, MetLife and Prudential Letter, supra note 51.

¹⁴² See Committee of Annuity Insurers Letter, supra note 35; Hancock, MetLife and Prudential Letter, supra note 51.

¹⁴³ Broker-Dealers should note, however, that, under SEA Rule 17a-3, they must, among other things, attempt to update certain account information every 36 months regarding accounts for which the broker-dealers were required to make suitability determinations.

At present, NYSE Rule 405(1) applies to “every order.” The proposal eliminates this language.

▪ Comments

Two commenters argued that the proposed “know your customer” rule should, as is true currently under NYSE Rule 405(1), require due diligence as to “every order” and not simply as to every account.¹⁴⁴ These commenters stated that it was a mistake to focus on knowing the customer rather than knowing both the customer and the product.¹⁴⁵ One of these commenters did not believe that reasonable-basis suitability provides enough protection in that respect in part because the suitability rule applies only when a recommendation is made.¹⁴⁶

▪ FINRA’s Response

FINRA is not proposing to adopt the NYSE requirement to learn the essential facts relative to every order in NYSE Rule 405(1), given the application of specific order-handling rules.¹⁴⁷ In addition, as noted by a commenter, the reasonable-basis obligation under the suitability rule requires broker-dealers and associated persons to know the securities and strategies they recommend through performing adequate due diligence.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

¹⁴⁴ See Cornell Letter, supra note 44; NASAA, supra note 34.

¹⁴⁵ See Cornell Letter, supra note 44; NASAA, supra note 34.

¹⁴⁶ See NASAA, supra note 34.

¹⁴⁷ See supra note 25.

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-039 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2010-039 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴⁸

Florence E. Harmon

Deputy Secretary

¹⁴⁸ 17 CFR 200.30-3(a)(12).

Exhibit 2a

Regulatory Notice

09-25

Suitability and “Know Your Customer”

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

Comment Period Expires: June 29, 2009

Executive Summary

As part of the process to develop a new consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on proposed consolidated FINRA rules governing suitability and know-your-customer (KYC) obligations.

The text of the proposed rules is set forth in Attachment A.

Questions regarding this *Notice* should be directed to James S. Wrona, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8270.

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by June 29, 2009.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

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

May 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Legal
- Compliance
- Senior Management

Key Topic(s)

- Suitability
- “Know Your Customer”

Referenced Rules & Notices

- FINRA Rule 2010
- NASD Rule 2310
- NASD IM-2310-3
- NASD Rule 3110
- NYSE Rule 405

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this Notice will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors and then must be approved by the SEC, following publication for public comment in the Federal Register.³

Discussion

NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405,⁴ addressing know-your-customer obligations, are critical to protecting investors. As a result, FINRA proposes to include modified forms of both rules in the Consolidated FINRA Rulebook. Each is discussed separately below.

Suitability

FINRA proposes to use the NASD suitability rule as the model for a modified suitability rule for the Consolidated FINRA Rulebook, proposed FINRA Rule 2111, and eliminate NASD Rule 2310.⁵ The modified rule would 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.

The Scope of the Proposed Suitability Rule

FINRA proposes to explicitly apply suitability obligations to a recommended transaction or investment strategy involving a security or securities. In this regard, the proposal would codify longstanding SEC and FINRA decisions and other interpretations stating that NASD Rule 2310 covers both recommended securities and strategies. For instance, NASD IM-2310-3 (the institutional customer interpretive material (IM), discussed below) explicitly states that firms' responsibilities under NASD Rule 2310 "include having a reasonable basis for recommending a particular security or strategy...." As with the current NASD rule, the proposed suitability rule would apply only if the firm or associated person makes a recommendation.

FINRA also proposes to codify in one place the discussions of the three main suitability obligations (reasonable basis, customer specific and quantitative),⁶ which are currently located in various IMs following NASD Rule 2310. The three obligations are discussed in a single section of the proposed suitability rule's supplementary material.

The proposed rule's supplementary material, moreover, includes a modified form of the current requirement in an IM that a firm refrain from "recommending purchases beyond a customer's capability." Additionally, the supplementary material maintains the discussion in two IMs regarding the suitability rule's significance in promoting fair dealing with customers and ethical sales practices.

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.

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).

Clear Exemption for Institutional Customers

The proposed suitability rule includes in the rule text a clear exemption for transactions or investment strategies involving a security or securities recommended to institutional customers, subject to specified conditions. The suitability obligations applicable to institutional customers are currently located in NASD IM-2310-3 (the institutional customer IM). The proposed new provisions addressing institutional customers are significantly shorter and focus on three key factors:

- ▶ Whether the institutional customer affirmatively indicates that it is willing to forego the protection of the customer-specific obligation of the suitability rule;

- 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
- Whether the firm or associated person has a reasonable basis to believe that the institutional customer is exercising independent judgment in evaluating the recommendations.

The proposal also clearly indicates that a firm fulfills its customer-specific suitability obligation to institutional customers if those factors are present.⁷ Finally, the proposal connects the definition of institutional customer to the definition of “institutional account” in NASD Rule 3110(c)(4). This change would eliminate the internal inconsistency that exists in the current NASD rule and would bring the definition of “institutional customer” up to date.⁸

Know Your Customer

FINRA proposes to transfer into the Consolidated FINRA Rulebook a modified version of NYSE Rule 405(1) requiring firms to use due diligence to know their customers and eliminate the NYSE version and its related supplementary material and rule interpretation. FINRA also proposes eliminating paragraphs (2) and (3) of NYSE Rule 405 and their related supplementary materials and rule interpretations as duplicative of NASD provisions that FINRA has proposed (or will be proposing) to be transferred into the Consolidated FINRA Rulebook. For instance, NYSE Rule 405(2) (Supervision of Accounts) is duplicative of NASD Rule 3010 (Supervision).⁹ Likewise, NYSE Rule 405(3) (Approval of Accounts) is duplicative of NASD Rules 3110(c)(1)(C) (Customer Account Information) and 3011 (Anti-Money Laundering Compliance Program) and, to a certain extent, the proposed modified version of NYSE Rule 405(1), discussed below.¹⁰

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). 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 beginning of the customer/broker relationship and does not depend on whether a recommendation has been made. FINRA *Notices* and other public pronouncements have stated that a similar know-your-customer obligation is embedded in the just and equitable principles of NASD Rule 2110 (now FINRA Rule 2010).¹¹

Endnotes

- 1 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See SEA Section 19 and rules thereunder.
- 4 For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.
- 5 NYSE Rule 405 has been interpreted as including implicit suitability obligations that are consonant with those imposed by NASD Rule 2310. The explicit provisions of NYSE Rule 405 are discussed in a separate section of this *Notice*.
- 6 There are three main suitability obligations: 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); customer specific (firms must have reasonable grounds to believe a recommendation is suitable for the specific investor); and quantitative (firms must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive.)
- 7 The current institutional customer IM is limited to customer-specific suitability. That remains true under the proposed rule.
- 8 NASD Rule 3110(c)(4) states that an "institutional account" includes an account of "(A) a bank, savings and loan association, insurance company, or registered investment company; (B) an investment adviser...; or (C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million." (FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). See *Regulatory Notice 08-25*.) NASD Rule 2310 currently refers to the definition of "institutional account" in NASD Rule 3110(c)(4), but the institutional customer IM uses a different definition for the term "institutional customer." Most NASD rules that refer to institutional accounts/customers use the definition in NASD Rule 3110(c)(4), which has a different monetary threshold (\$50 million in assets) than does the institutional customer IM (\$10 million invested in securities and/or under management) and, unlike the institutional customer IM, NASD Rule 3110 allows a natural person to be viewed as an institutional account.

09-25

May 2009

Endnotes

- 9 FINRA is proposing to adopt a modified version of NASD Rule 3010 as FINRA Rule 3110. See *Regulatory Notice 08-24* (May 2008).
- 10 FINRA also is proposing to eliminate NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) because the same content is addressed by SEA Section 11(a), and the provision is specific to floor activities. FINRA, however, proposes to retain NYSE Rule 405(4) in the Transitional Rulebook and address its content at a later phase of the rulebook consolidation process.
- 11 See Exchange Act Release No. 44178 (April 12, 2001), 66 FR 20697, 20698 n.7 (April 24, 2001) (Notice of Filing and Immediate Effectiveness of NASD Proposed Rule Change Relating to Suitability Rule; SR-NASD-2001-20).

ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined and proposed deletions are in brackets.

Text of Proposed New FINRA Rules

2000. DUTIES AND CONFLICTS

2100. TRANSACTIONS WITH CUSTOMERS [GENERAL STANDARDS]

2110. Recommendations

2111. Suitability

(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.

(b) A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in NASD Rule 3110(c)(4), if (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.

• • • Supplementary Material: — — — — —

.01 General Principles. Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA's rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Components of Suitability Obligations. There are three main suitability obligations under Rule 2111: reasonable-basis suitability, customer-specific suitability and quantitative suitability. The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors. 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. The customer-specific obligation requires that a member or associated person have reasonable grounds to believe that the recommendation is suitable for a particular customer based on that customer's profile, as delineated in Rule 2111(a). 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.

.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.

2090. Know Your Customer

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.

• • • Supplementary Material: — — — — —

.01 Essential Facts. For purposes of this Rule, facts “essential” to “knowing the customer” include the customer’s financial profile and investment objectives or policy.

* * * * *

Exhibit 2b

REGULATORY NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM A COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1.	06/16/09	Daniel Abelson	Abelson & Company LLC
2.	06/18/09	James Agrawal	J. Agrawal Financial Group
3.	06/17/09	Steve Aguiar	AWM
4.	06/24/09	Tambi Aks	ING Financial Partners
5.	06/17/09	Richard Aldridge	Wealth Preservers LLC
6.	06/22/09	James Alexander	Cunningham Powell Alexander, A.C.
7.	06/16/09	Bart Allard	Allard Financial Advisors, LLC
8.	06/16/09	Edgar Allison	First Charter Financial Corporation
9.	06/17/09	Terry R. Altman	Altman Financial LLC
10.	06/16/09	Walter Altorfer	WRA & Associates
11.	06/17/09	Marc Anderson	Financial Network
12.	06/16/09	Roy Anderson	Mutual Service Corporation
13.	06/19/09	Dalilia Badajos	The Rule Group
14.	06/17/09	Jennifer K. Baker	Richardson & Stout Financial Services, Inc.
15.	06/17/09	Vernon Baker	Royal Alliance Associates, Inc.
16.	06/16/09	Virginia Ballard	ProEquities, Inc
17.	06/26/09	Andrew Bambeck	Raymond James Financial Service, Inc
18.	06/17/09	Scott Barber	Barber Financial Co., Inc
19.	06/17/09	Jay Barclay	DCS Wealth Advisory Services LLC
20.	06/19/09	William Barron	FSC Securities
21.	06/17/09	Darin Basler	Raymond James Financial Services
22.	06/19/09	Richard Basler	Raymond James Financial Service, Inc
23.	06/16/09	Mark Bass	Pennington, Bass & Associates
24.	06/17/09	Thomas Baughman	Thomas Boughman
25.	06/17/09	Thomas Baumler	SagePoint Financial
26.	06/16/09	Donald Baxter	Baxter & Associates, Inc.
27.	06/23/09	Mark Beam	ING Financial Partners
28.	06/16/09	Donna Bellamy	FPI & Associates
29.	06/24/09	Carey Berger	BSR
30.	06/17/09	Sean Berger	Adirondack Retirement Specialists
31.	06/16/09	Jon Best	Raymond James Financial Service, Inc
32.	06/24/09	Nancy Bidrowski	ING Financial Partners
33.	06/16/09	James Billmyer	Raymond James Financial Service, Inc
34.	06/19/09	Thomas Bodensteiner	Bodensteiner Investment Advisors
35.	06/16/09	Jeanine Bodie	First Command
36.	06/17/09	Bradley Bofford	Financial Principles
37.	06/17/09	Joseph Bollinger	LPL Financial

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM A COMMENT LETTERS			
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38.	06/17/09	James Bone	Bone Financial Group, Inc.
39.	06/17/09	Richard Bores	Commonwealth Financial Network
40.	06/16/09	James Bowen	Atlantic Financial Services
41.	06/16/09	David Bowman	--
42.	06/16/09	Brandon Boyd	Heritage Planning Financial Group
43.	06/16/09	Bruce Boyd	Heritage Planning Financial Group
44.	06/17/09	Tiffany Boykin	Financial Services
45.	06/18/09	Hugh Boyle	BS Financial Advisers
46.	06/18/09	Lincoln A. Boyle	Savage & Associates
47.	06/16/09	Brock J Brady	ING Financial Partners
48.	06/17/09	Nick Brait	Lasting Legacy Ltd
49.	06/17/09	Verna Brand	Raymond James Financial Service, Inc
50.	06/18/09	Gerald Brandman	Savage and Associates
51.	06/18/09	Max Brann	Brann Financial Services, LLP
52.	06/17/09	Dr. Abbott Brayton	Bell Wealth Management
53.	06/16/09	Jack Brkich	JMB Financial Managers
54.	06/16/09	Paul Brown	Heritage Planning Financial Group
55.	06/17/09	John Buckley	Raymond James Financial Service, Inc
56.	06/17/09	Dale Buelow	Buelow Financial Group
57.	06/16/09	Merrick Burleson, Sr	Burleson Financial Strategies, Inc
58.	06/16/09	George M Bush	Advanced Financial & Pension Solutions
59.	06/17/09	Peter Bush	Horizon Wealth Management LLC
60.	06/17/09	Tom Butler	ATI Financial Services
61.	06/22/09	Edna Buys	Main Street Financial/INVEST Corp
62.	06/18/09	Joe Bynum	Raymond James Financial Service, Inc
63.	06/17/09	John C. Campbell	Savage & Associates
64.	06/17/09	Charlene Carter	Carter & Carter Financial
65.	06/16/09	Julie Casserly	JMC Wealth Management, Inc
66.	06/17/09	Robert Chamberlain	Raymond James Financial Service, Inc
67.	06/22/09	Todd Chamberlain	Masters Legacy
68.	06/18/09	Alan Chandler	Chandler & Edem Financial Consultants
69.	06/19/09	Nathaniel Cheney	Raymond James Financial Service, Inc
70.	06/19/09	Scott Cheshire	Jim Barlow Advisors
71.	06/17/09	Paul D. Christ	The Financial Network Group, LTD
72.	06/16/09	Wayne Christian	Wayne Christian Financial Services
73.	06/16/09	Shaun Clasby	Woodbury Financial
74.	06/17/09	Casey Cleveland	CGC Financial
75.	06/16/09	Barbara Coffey	Raymond James Financial Service, Inc
76.	06/16/09	Jon Cohen	CG Financial Services

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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77.	06/22/09	Rich Colacino	Royal Alliance Associates
78.	06/19/09	Kevin Collier	Collier Wealth Management Inc
79.	06/23/09	Nellie Coltrain	Financial Network Investment Corp
80.	06/17/09	Frank Congemi	LPL/MSC
81.	06/17/09	Bruce Cook	Cook and Philips Wealth Management Group
82.	06/16/09	Paul Cooper	--
83.	06/16/09	Thomas Corcoran	Mid-America Insurance Services, Inc
84.	06/21/09	Luana Corral	--
85.	06/19/09	Marge Coyle	ISD
86.	06/16/09	John Cozart	Lincoln Financial Services
87.	06/16/09	Jerry Crader	Raymond James Financial Service, Inc
88.	06/17/09	Allan Cranfill	Cranfill & Associates Wealth Mgmt
89.	06/17/09	William Cruz	CFS Brokerage
90.	06/17/09	Michael Curtis	Curtis Financial Services
91.	06/16/09	Timothy Custer	First Command Financial Planning Inc.
92.	06/17/09	Kelly J. Daly	Daly Insurance Brokerage Services, LLC
93.	06/22/09	Sandra Darling	First State Bank Investment Services
94.	06/17/09	Ryan L. Dauterman	Savage & Associates
95.	06/17/09	Allen Dearing	Waterstone Financial Group
96.	06/16/09	David Decker	Decker Financial Group
97.	06/16/09	Michael DeLorey	Prism Financial Group
98.	06/18/09	Patrick DeMay	Carver Financial Services
99.	06/18/09	Mark Denay	Raymond James Financial Service, Inc
100.	06/16/09	John DeSalva	Georgetown Financial Group Inc
101.	06/16/09	Alan Dickson	Energi Pension Systems, Inc
102.	06/16/09	Thomas Diehl	Raymond James Financial Services
103.	06/24/09	Chester Dilday	The ASA Group
104.	06/17/09	Marijo Dluzak	FSC Securities Corporation
105.	06/23/09	Joy Dobbs	--
106.	06/17/09	Scott Dolitsky	DB Strategic Wealth
107.	06/16/09	Frank Doyle	ING Financial Partners
108.	06/18/09	Frederick Driscoll	ING Financial Partners
109.	06/30/09	Susan Dukes	ING Financial Partners
110.	06/17/09	Mike Dunbar	Financial & Retirement Planners, NW
111.	06/16/09	Amy Duncan	Woodbury Financial
112.	06/19/09	Constance Dupras	Capital Assets Planning, Inc.
113.	06/16/09	Angela K. Eickhoff	White & Associates
114.	06/17/09	Brian Eilers	M.J. Smith and Associates
115.	06/18/09	Patricia Ela	Ela Financial Group, Inc.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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116.	06/18/09	Thomas Ela	Ela Financial Group, Inc.
117.	06/19/09	Tarik Eldin	Financial Network
118.	06/16/09	Patrick K. Elmore	Raymond James Financial Services, Inc.
119.	08/03/09	Martin Empey	Ashworth & Empey Financial, Inc.
120.	06/17/09	Roger Engel	Engel & Associates
121.	06/22/09	Linda Erickson	Erickson Advisors
122.	06/16/09	Mark Erwin	Erwin Financial
123.	06/16/09	Peter Eshoo	ING Financial Partners
124.	06/16/09	Jennifer Failla	Failla Financial
125.	06/16/09	Carl Ferrazza	Vantage Financial Group
126.	06/16/09	Timothy Ferris	FSC Securities Corporation
127.	06/18/09	Al Figliolia	Cornerstone Professional Advisor Services, LLC
128.	06/17/09	Brady Fineske	Savage & Associates
129.	06/19/09	Alan Flake	VSR Financial Services, Inc.
130.	06/17/09	Kimerli Fleck	PFG
131.	06/17/09	David Flecker	Dewitt Stern Insurance & Risk Advisory
132.	06/17/09	Michael Flower	Financial Principles, LLC
133.	06/16/09	Michael Floyd	Raymond James
134.	06/19/09	Patrick J. Flynn	Financial Network Investment Corporation
135.	06/18/09	John Foerster	Financial Network Investment Corp
136.	06/16/09	Sarah Foley	BIPAC
137.	06/18/09	John Forney	Forney Financial Solutions LLC
138.	06/21/09	Alan Freedman	Geronimo Financial, LLC
139.	06/16/09	William Freund	Freund & Co. Investment Advisors, LC
140.	06/25/09	Craig Friedrichsen	ING Financial Partners
141.	06/19/09	David M Gallagher	LPL Financial
142.	06/16/09	David Garberg	Financial Network Investment Corp
143.	06/17/09	Michael Garrison	Garrison Financial, Inc.
144.	06/16/09	Mary Jo Garvey	Bill Hickey Financial
145.	06/17/09	Daniel Gavin	Gavin & Associates LLC
146.	06/26/09	Bob Gerber	Premier FM
147.	06/17/09	Stephen Geremia	Ashwood Advisors, LLC
148.	06/17/09	Chera Gerstein	Willis HRH
149.	06/23/09	Cindy Gettel	ING Financial Partners
150.	06/22/09	Carol Girvin	FSC Securities
151.	06/20/09	Brian Glickman	The Investment Center
152.	06/16/09	Glenn Goldman	LPL Financial
153.	06/16/09	Stanley Gordon	Protective Life

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154.	06/16/09	Lawrence A. Grabenstein	Potomac Financial Group, Ltd.
155.	06/19/09	David Grabner	Grabner Financial
156.	06/24/09	William Grace	ING Financial Partners
157.	06/17/09	John Grady	MultiFin
158.	06/19/09	C. Eric Greth	Financial Network Investment Corporation
159.	06/22/09	William F. Greulich	WFG Associates, Inc.
160.	06/17/09	James Grey	GA Advisors
161.	06/19/09	John Griffin	Raymond James Financial Service, Inc
162.	06/17/09	Raymond J. Grubbs	Raymond J. Grubbs & Associates, Inc.
163.	06/26/09	Amel Guigli	Raymond James Financial Service, Inc
164.	06/16/09	Ronald Guiler	Executax Corp.
165.	06/16/09	William Guise	Woodbury Financial
166.	06/19/09	Jeff Gurman	Gurman WM
167.	06/23/09	Penelope Haase	Financial Network Investment Corp
168.	06/19/09	David Halfaker	GFP Direct
169.	06/17/09	Gerald Hall	Raymond James Financial Service, Inc
170.	06/17/09	Michelle Brennan Hall	Brennan Financial Services
171.	06/17/09	Sandra Hall	The Financial Network Group, LTD
172.	06/16/09	James Hallett	Hallett Advisors
173.	06/23/09	Frank W. Hamill	--
174.	06/25/09	Craig Hardy	--
175.	06/22/09	Robby Harfst	Raymond James Financial Service, Inc
176.	06/17/09	Suellen Hawking	Hawking Financial Group, LLC
177.	06/17/09	Jennifer Hector	Raymond James Financial Service, Inc
178.	06/23/09	Daniel Helander	ING Financial Partners
179.	06/17/09	Joseph Henegan	Henegan Financial Services
180.	06/17/09	Richard Herrick	Savage & Associates
181.	06/18/09	Susan Herrmann	Interactive Wealth Dynamics, Inc.
182.	06/19/09	Mel R Hertz	The Retirement Coach
183.	06/17/09	Louis L. Hibbs	Savage & Associates
184.	06/17/09	Adam Hill	Maxwell Financial Management
185.	06/22/09	Jack Hill	Raymond James Financial Service, Inc
186.	06/17/09	John Hinck	Centaurus Financial Inc.
187.	06/17/09	James Hohman	Allegheny Investments
188.	06/17/09	Doug Hollen	Frontline Financial
189.	06/17/09	Carleton "Holly" Hollister	Savage & Associates
190.	06/18/09	David Holtz	NEXT Financial Group
191.	06/23/09	Roy Holtz	NEXT Financial Group, Inc.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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192.	06/18/09	Byron Holz	SagePoint Financial
193.	06/25/09	Jocelyn Holzwarth	Holzwarth Financial Services
194.	06/17/09	Joseph Hoover	Allegheny Investments
195.	06/16/09	Richard Hoover	SagePoint Financial
196.	06/24/09	Billie Houk	ING Financial Partners
197.	06/18/09	Ronald Housley	Housley Financial Services
198.	06/18/09	Frederick Hubler, Jr.	Creative Capital Wealth Management Group
199.	06/17/09	Jaime Huffman	Integrity Financial Advisors
200.	06/16/09	Steve Hurt	Raymond James Financial Service, Inc
201.	06/23/09	Fred Huse	Thomas-Huse Financial Services, Inc
202.	06/16/09	Van Huynh	--
203.	06/17/09	David Hynes	Focus Financial
204.	06/17/09	Donald Imler	Allegheny Investments
205.	06/17/09	Tom Jacobsen	M.J. Smith and Associates
206.	06/17/09	David Jeter	Allegheny Investments
207.	06/19/09	Robert Jilek	Midwest Financial Services
208.	06/29/09	James L Johnson	INGFP
209.	06/16/09	Kevin Johnson	ING Financial Partners
210.	06/18/09	Philip Johnson	Savage and Associates
211.	06/16/09	Rob Johnson	Woodbury Financial
212.	06/17/09	Roy F Johnson	Coleman-Johnson
213.	06/16/09	Paul Johnston	Generations Financial Advisors Inc
214.	06/17/09	Robert Joki	ING Financial Partners
215.	06/19/09	Warren Kalmenson	INGFP
216.	06/17/09	Kevin Kane	Raymond James Financial Service, Inc
217.	06/17/09	Antone Keller	--
218.	06/17/09	William Kelly	Kelly Financial Group, LLC
219.	06/18/09	Steven Kennedy	Towne Investment Group
220.	06/16/09	Randall Kim	R.W.KIM and Company
221.	06/17/09	Frank Kimmel	Kimmel Financial Network
222.	06/18/09	David King	Rogers Financial Corp.
223.	06/26/09	Donald M Kohnstamm	Desmon & Kohnstamm, Inc
224.	06/17/09	Mike Konopelski	Hurstweiss
225.	06/17/09	Nicholas Kralj	BCI Group, Inc.
226.	06/22/09	Stephen Kremer	Centaurus Financial
227.	06/16/09	Ian Kutner	Ian Kutner
228.	06/22/09	Sheldon Kuwana	Benefits International, Inc.
229.	06/23/09	Allen Lakner	--
230.	06/17/09	Brian Lakner	LAMB Financial Services

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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231.	06/16/09	John Lamb	ING Financial Partners
232.	06/17/09	Carol K Lampe	Lampe Asset Management
233.	06/27/09	M Sue Larkin	Larkin & Associates
234.	06/17/09	Barry Laufman	Advanced LTC Insurance Services, LLC
235.	06/17/09	Nancy Laug-Sholin	Financial Network
236.	06/16/09	Sally Law	Law & Associates, Inc
237.	06/16/09	Paul M. League	League Fin. & Ins. Serv.
238.	06/16/09	Judith Lefton	ING Financial Partners
239.	06/26/09	Douglas Lemon	Cambridge
240.	06/17/09	Lisa Leonard	ING Financial Partners
241.	06/25/09	Dennis Leonida	Capital Financial Group, Inc
242.	06/24/09	William Lervaag	Commonwealth Financial Group
243.	06/18/09	Gary LeSage	Savage & Associates, Inc.
244.	06/16/09	Scott Leverenz	Financial Resource Group
245.	06/17/09	Chris Lewis	Royal Alliance Associates
246.	06/16/09	John Lewis	--
247.	06/19/09	Donald Lindgren	Silbernagel and Jasen
248.	06/19/09	Monica Littlefield	1 st Global Capital Corp.
249.	06/19/09	David Lloyd	Financial Strategies, Inc.
250.	06/16/09	Jason Loiselle	FSC Securities Corporation
251.	06/17/09	Richard Longo	RAL Services, Inc.
252.	06/18/09	Vicki Lublin	Financial Matters
253.	06/17/09	Jeannie Luckey	Raymond James Financial Service, Inc
254.	06/17/09	John Lugauer	Investment Centers of America
255.	06/17/09	James Lumpkin III	Raymond James Financial Service, Inc
256.	06/17/09	Judith Lutzzy	Judy F. Lutzzy, CFP
257.	06/16/09	Valentine Lynch	FSC Securities Corporation
258.	06/20/09	Michael Mackin	MAPS Financial Inc
259.	06/17/09	G. Carl Mahler, Jr	The Pinnacle Group
260.	06/17/09	Darla Main	Main Advisory Inc
261.	06/17/09	Timothy Makovkin	ING Financial Partners
262.	06/17/09	Pat Manzo	Quality Financial Group, Inc.
263.	06/17/09	Donald L. Maricle	C&M Capital Resources, Inc.
264.	06/19/09	Paul Marrella	Raymond James Financial Service, Inc
265.	06/19/09	Ryan Marshall	Financial Network Investment Corp
266.	06/17/09	Roger Martin	Coble Cravens Financial Services
267.	06/16/09	Steven Martin	--
268.	06/22/09	Austin Maschino	Royal Alliance Associates
269.	06/17/09	Brian Matthews	Brian Matthews & Company

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270.	06/17/09	Susan McClelland	Multifin
271.	06/16/09	Edward McCloud	ING Financial Partners
272.	06/24/09	John McFadden	McFadden & Associates
273.	06/26/09	Donald R McFarland	SBC Global
274.	06/16/09	Judith McGee	Raymond James Financial Service, Inc
275.	06/22/09	Jane McGinnis	Raymond James Financial Services, Inc.
276.	06/16/09	Jon McGraw	Buttonwood Financial Group, LLC
277.	06/24/09	Michael McKay	ING Financial Partners
278.	06/18/09	Donald L. McLean	SunPlan Financial Services
279.	06/16/09	Nancy McMillan	McMillan Financial Services
280.	06/18/09	Michael McNamara	McNamara Financial
281.	06/17/09	Susan McNamara	Commonwealth Financial Network
282.	06/16/09	Jonathan Meaney	CASCFM
283.	06/17/09	Kay Melton	Kay Melton & Associates
284.	06/19/09	John Meo	LPL Financial
285.	06/17/09	Michael Mercurio	Financial Resource Advisors
286.	06/17/09	Graham Merk	IA Financial Advisors
287.	06/17/09	Louis Merkle, III	Merkle Financial Group
288.	06/17/09	Roy Meyers	RJM Associates
289.	06/25/09	Stephen Michaels	Woodbury Financial
290.	06/17/09	Thomas Michaels	Foreguard Agencies, Inc.
291.	06/17/09	Jeffrey Miller	Financial Network
292.	06/17/09	Kyle Miller	Financial Network Investment Corp
293.	06/17/09	Paul Miller	Axial Financial Group
294.	06/16/09	Robert Miller	ING Financial Partners
295.	06/16/09	Matt Mitcham	Mitcham Financial
296.	06/19/09	Deanna Mohorich	Financial Network
297.	06/22/09	Curtis Mohr	Royal Alliance Associates
298.	06/17/09	Jack Mole	Raymond James Financial Service, Inc
299.	06/16/09	John Moore	--
300.	06/24/09	Walter Moore	Crown Capital Securities, LP
301.	06/17/09	Stephen D. Morr	Savage & Associates
302.	06/22/09	Travis Morrow	3 Rivers Financial Group
303.	06/19/09	Lee Morthland	Raymond James Financial Services, Inc.
304.	06/17/09	Michael Murray	Foundryf Financial Services, LLC
305.	06/17/09	Barry Musser	Central Penn Advisors
306.	06/17/09	Laurence Myers	Royal Alliance Associates, Inc.
307.	06/17/09	Gregory E. Nemec	Lincoln Financial Securities
308.	06/22/09	Roberta Nestor	Commonwealth Financial

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309.	06/17/09	Lois Nichols	SBC Global
310.	06/17/09	Clark Nicholson	F&M Bank
311.	06/18/09	Lee Nickle	--
312.	06/16/09	Michael Niedenfuehr	--
313.	06/16/09	Brian J Nikulski	Nikulski Financial Inc
314.	06/17/09	Cheryl Norman	Savage & Associates
315.	06/17/09	Vincent Notte	Royal Alliance Associates
316.	06/19/09	David O'Block	The Equity Advisor Group, Inc.
317.	06/17/09	Virginia O'Donnell	Allegheny Investments
318.	06/23/09	Ronald O'Dowd	Oakwood Financial Group, Inc.
319.	06/16/09	Kelly O'Malley	Oak Brook Wealth Management
320.	06/18/09	W. Douglas O'Rear	Woodbury Financial
321.	06/16/09	Sam Ogrizovich	Ogrizovich Financial Management
322.	06/17/09	Nancy Onderko	CFO Financial Services, Inc.
323.	06/17/09	Damian J. Ogrodowski	Savage & Associates
324.	06/18/09	Steven Orr	Orr Financial Group
325.	06/17/09	James Osborne	Raymond James Financial Service, Inc
326.	06/16/09	Rick Otto	Financial Centers Inc
327.	06/19/09	Richard Overdorf	Multi-Financial
328.	06/19/09	Jerome Panther	Financial Network
329.	06/17/09	Graham Parsons	GCP Consulting
330.	06/17/09	Richard Pascoe	Raymond James Financial Services, Inc.
331.	06/17/09	Bryan A. Paul	Richardson & Stout Financial Services, Inc.
332.	06/18/09	Kathleen Peake	Woodbury Financial Services
333.	06/19/09	Tamara Peiffer	Savage and Associates
334.	06/24/09	Brian Perley	Hammond Financial
335.	08/19/09	Thomas Perretta	The Investment Center
336.	06/16/09	Randal Perrier	Perrier Wealth Management
337.	06/17/09	Richard Perry	Commonwealth Financial Network
338.	06/16/09	John Peters	Professional Wealth Strategies, Inc
339.	06/16/09	Paul Peterson	ING Financial Partners
340.	06/17/09	Thomas Pettis	LPL
341.	06/16/09	Dan Phillips	Royal Alliance Associates Inc
342.	06/19/09	Frank Pickett	Raymond James Financial Services, Inc.
343.	06/25/09	Tony Pizelo	Pacific West Financial Group
344.	06/16/09	Michael Keith Poe	Compensation Designs, LLC
345.	06/17/09	Norman Politziner	NJP Associates
346.	06/17/09	A. Wayne Potter	Integrated Wealth Advisors, Inc.
347.	06/16/09	Thomas Powell	Raymond James Financial Service, Inc

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348.	06/16/09	Tim Powell	Royal Alliance Associates
349.	06/17/09	Christopher Pratt	Wolters, Hagar & Pratt Financial Planning, Inc.
350.	06/17/09	Robert Pugliese	Premier Cir.
351.	06/17/09	Charles Quattrochi	Raymond James Financial Service, Inc
352.	06/20/09	Richard Ralston	Parkway Financial Group
353.	06/16/09	James Ramsey	Ramsey Capital Investments
354.	06/16/09	Lindsey Randolph	Financial Network Investment Corp
355.	06/17/09	William Raney	GNB Investments
356.	06/17/09	Allen Rausch	ING Financial Partners
357.	06/17/09	Gerald Raymond	Raymond Wesley Wealth Management Inc
358.	06/17/09	David Rearick	Allegheny Investments
359.	06/16/09	D Stephen Reed	Reed Financial Network
360.	06/18/09	Richard Reiser	Investment Centers of America
361.	06/22/09	Philip Renten	Woodbury Financial
362.	06/17/09	Bryan Rex	INVEST Financial
363.	06/17/09	Richard Reynolds	SagePoint Financial
364.	06/16/09	Stephen Rice	Steve Rice and Associates
365.	06/16/09	Jamie Richardson	ViewPoint Investment Group
366.	06/19/09	Jamie Richardson	Raymond James Financial Service, Inc
367.	06/17/09	John M. Richardson	Richardson & Stout Financial Services, Inc.
368.	06/24/09	Michael Richardson	ING Financial Partners
369.	06/17/09	Stephen Riley	Riley, Nichols & Munn
370.	06/17/09	Jim Riutta	First Command
371.	06/17/09	Domenic Rizzi	Reliant Financial Services
372.	06/17/09	Williams Robbins	Coordinated Capital Securities, Inc.
373.	06/17/09	David P. Robinson	Resource Consulting Group, Inc.
374.	06/17/09	David Robson	Allegheny Investments
375.	06/17/09	Christine Roessel	Commonwealth Financial Network
376.	06/23/09	Bronson J. Rogers	Financial Network Investment Companies
377.	06/17/09	Joseph Romano	Romano-Romano
378.	06/18/09	Donald Rork	AssetDynamics
379.	06/17/09	Michael J. Rosenberg	Savage & Associates
380.	06/16/09	Steve Ross	First Command Financial Planning
381.	06/17/09	Adam Rothman	Tower Square Securities
382.	06/16/09	Joe Rubinstein	Diversified Securities Inc
383.	06/24/09	Rod Rumelhart	--
384.	06/17/09	John Ruzza	MainStreet Financial
385.	06/19/09	Michael Ryan	Ram Financial
386.	06/25/09	Robert Ryan	--

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387.	06/17/09	James Saling	Raymond James Financial Service, Inc
388.	06/26/09	Rick Sany	SagePoint Financial
389.	06/17/09	Scott Schayot	Raymond James Financial Services
390.	06/17/09	Michael Schick	Comprehensive Financial Group
391.	06/17/09	Reina Schlager	Schlager Sonntag & Levin
392.	06/17/09	Louis Schwartz	Schwartz Financial Services
393.	06/18/09	Sidney Schwartz	FSC Securities
394.	06/27/09	Edward Sella	SPC Financial, Inc.
395.	06/17/09	Steve Seward	Cambridge Investment Research
396.	06/20/09	Eric Shank	Woodbury Financial
397.	06/23/09	Karren Sharp	ING Financial Partners
398.	06/26/09	Charlotte Shaw	Shaw Financial
399.	06/16/09	Edward Shockley	FNIC
400.	06/17/09	Jacob Short	--
401.	06/16/09	David Shrom	FSC Securities Corporation
402.	06/22/09	Nancy Sides	Sides Financial Strategies, Inc
403.	06/22/09	Mitch Silberman	--
404.	06/17/09	Steven Simon	Equity-Services, Inc.
405.	06/24/09	Erik Sjodin	Al Sjodin & Associates
406.	06/19/09	William R. Skeeters	Great American Advisors
407.	06/17/09	John Sklencar	FSC Securities Corp.
408.	06/17/09	James Smith	James D Smith Financial Services
409.	06/22/09	James Smith	Georgetown Financial Group, Inc.
410.	06/17/09	Mark J. Smith	M.J. Smith and Associates
411.	06/16/09	Ronald Smith	Honeysutt Smith & Associates
412.	06/18/09	Karl Smrekar	Allegheny Financial Group
413.	06/18/09	Rick Spalding	American Financial Advisors / American Nat'l Bank
414.	06/16/09	Brenda Speer	Professional Benefit Solutions, LLC
415.	06/26/09	Christopher Stein	LPL Financial
416.	06/18/09	Daniel N. Steinberg	Savage & Associates
417.	06/16/09	Brian Stephens	H D Vest Investments
418.	06/16/09	Mary Sterk	Sterk Financial Services
419.	06/17/09	Mark Stevens	--
420.	06/17/09	William F. Stevens, Jr.	Raymond James Financial Service, Inc
421.	06/16/09	Daniel Stewart	VSRFin
422.	06/19/09	William Stewart	Christopher Financial Group
423.	06/17/09	Brenda Stone	Financial Services
424.	06/16/09	Nick Stowell	Financial Services

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM A COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
425.	06/17/09	Robert Stroud, Jr.	Stroud Financial Services
426.	06/22/09	Niki Sturm	--
427.	06/17/09	Nancy Swain	Swain Hicks Financial Group, Inc.
428.	06/17/09	Valerie Swan	Allegheny Investments
429.	06/19/09	Douglas Swartout	Crown Capital Securities, Inc.
430.	06/18/09	Bryan Sweet	Sweet Financial
431.	06/18/09	Richard T	Raymond James Financial Service, Inc
432.	06/17/09	Debra Brennan Tagg	Brennan Financial Services
433.	06/17/09	Alan Tanenblatt	Royal Alliance Associates, Inc.
434.	06/17/09	David Tanner	Raymond James Financial Service, Inc
435.	06/17/09	Richard Tate	FSC Securities
436.	06/16/09	J Lawrence Taunt	Regal Financial Group, SagePoint Financial
437.	06/16/09	Nicholas Taverna	Royal Alliance Associates
438.	06/17/09	Cheryl Taylor	Equity Services
439.	06/25/09	Dennis W. Taylor	--
440.	06/17/09	William Taylor	Family Wealth Advisors
441.	06/17/09	Mark Teachout	Mark W Teachout, CIC, CFP & Associates
442.	06/17/09	Jane Terry	Raymond James Financial Service, Inc
443.	06/16/09	Lawrence J. Thaul	Millennium Financial Inc
444.	06/17/09	Clint Thomas	M.J. Smith and Associates
445.	06/22/09	Daniel Thomas, Jr	Thomas Financial Group, LLC
446.	06/29/09	David L Timmons	ProEquities
447.	06/19/09	Tim Toland	Savage and Associates
448.	06/20/09	Bryan Tole	Investment Centers of America
449.	06/17/09	Joseph Towson	Raymond James Financial Service, Inc
450.	06/17/09	Daniel G. Trout	Financial Principles, LLC
451.	06/16/09	Ronald F Troyan	Rogers & Troyan Advisory Group, Inc
452.	06/17/09	Joel Tschantz	Savage and Associates
453.	06/17/09	Kevin Tucker	Tucker Financial Services
454.	06/19/09	William Tufts	Crown Capital Securities LP
455.	06/23/09	Thomas G. Tuke	Tower Square Securities, Inc.
456.	06/16/09	Ed Ulledalen	Raymond James Financial Service, Inc
457.	06/17/09	Charles Valenzuela	PDI Financial Group, Inc.
458.	06/24/09	Edward J Vespa	Financial Services
459.	06/24/09	Thomas Vickers III	Financial Planning Associates, LLC
460.	06/16/09	Charles Vickery	Vickery Financial Services, Inc.
461.	06/19/09	Gilberto Villarreal	IRA Retirement Advisors, Inc.
462.	06/16/09	Gerrit Vrieze	Compensation Designs, LLC
463.	06/18/09	William Wagner	Tower Square Securities, Inc.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM A COMMENT LETTERS			
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464.	06/23/09	Evan Walker	--
465.	06/18/09	Dan Wallen	Wallen Wealth Management
466.	06/17/09	Jonathan W. Webb	BACH Investments Plus, LLC
467.	06/18/09	Sherri Frank Weintrop	Wealth Management Advisors, Inc.
468.	06/19/09	Richard Wheeler	Richard C Wheeler
469.	06/16/09	Kenneth White	White & Associates Financial Services
470.	06/16/09	Sherri White	--
471.	06/16/09	Mark Wiacek	Heritage Planning Financial Group
472.	06/16/09	Dan Wilburn	R.B. Smith Co., Inc
473.	06/16/09	Trevor Wilde	Wilde Wealth Management Group, Inc
474.	06/30/09	Darrell Williams	ING Financial Partners
475.	06/16/09	Kelly Williams	First Command Financial Planning
476.	06/16/09	Michael Williams	ALTIUS Financial
477.	06/18/09	Lucius Williamson, Jr.	Williamson & Associates
478.	06/16/09	A. Rhodes Wilson	A. Rhodes Wilson & Associates, Inc.
479.	06/16/09	Daniel Wilson	Raymond James Financial Service, Inc
480.	06/16/09	Randall Wimsatt	ING Financial Partners
481.	06/25/09	Bradley Windell	Windell Financial
482.	06/17/09	Edward Wise	ING Financial Partners
483.	06/19/09	Emerson Wiser	Allied Financial Services
484.	06/23/09	Richard Wojcik	New England Financial Planning Group
485.	06/17/09	Darryl Wolff	Wolff Financial Service
486.	06/17/09	Stephen Woods	Resource Financial Planning, Inc.
487.	06/17/09	James Woytcke	Financial Success, LTD
488.	06/17/09	Gregory Wynn	Greg Wynn Financial Services
489.	06/18/09	E. W. Woody Young	Quest Capital Management, Inc.
490.	06/16/09	Anthony Zambri	--
491.	06/17/09	David Vander Zwaag	National Planning Corp.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1.	06/24/09	Terry D. A	New York Life Insurance Co.
2.	06/23/09	Robelynn Abadle	Abadie Financial Services
3.	06/23/09	Laurie Adams	Country Financial
4.	06/23/09	Ernest Aiguier	New York Life Insurance Co.
5.	06/25/09	Dane E. Albright	Cincinnati Life Insurance Co.
6.	06/23/09	Brad Alderfer	Northwestern Mutual Financial Network
7.	06/26/09	Tim Alexander	KYFB Ins.
8.	06/23/09	Robert Allen	Triad
9.	06/23/09	Susan Allen	--
10.	06/23/09	Sue Allhiser	--
11.	06/23/09	Monti Allison	Lincoln Financial Network
12.	06/24/09	Albert Althaus	--
13.	06/23/09	Daniel Anderson	HTK
14.	06/23/09	Eddie F. Anderson	Hawkins-Group
15.	06/23/09	Gregory Anderson	Northwestern Mutual Financial Network
16.	06/23/09	Richard Anderson	SFB CIC
17.	06/29/09	Scott Anderson	Anderson Financial Services
18.	06/26/09	Stephen Anderson	Chartwell Financial Group
19.	06/25/09	Drucilla Andrews	SSA Brokerage
20.	06/25/09	Russell S. Andrews	Dreamscape
21.	06/25/09	Jason M. Apolenis	Avenue Wealth
22.	06/26/09	Steven Aquino	AW Fin
23.	06/26/09	"Cheeto" A.G. Arellano	ARGOFA
24.	06/23/09	Jameel Arif	Financial Network
25.	06/25/09	Scott Arnold	KYF Bins
26.	06/29/09	Greg Atkins	SBC Global
27.	06/29/09	Michael Atkinson	FBFS
28.	06/25/09	Michael Atterberry	--
29.	06/26/09	Ed Auble	Auble Financial
30.	06/25/09	Robert Avery	--
31.	06/24/09	Michael Axton	Megagate
32.	06/23/09	John Back	--
33.	06/23/09	Gregory Badgerow	Horace Mann
34.	06/25/09	Galt Baker	Baker Birdwell
35.	06/25/09	Judy D. Baker	New York Life Insurance Co.
36.	06/23/09	EJ Bud Baldwin	--
37.	06/23/09	Christopher Ball	Northwestern Mutual Financial Network
38.	06/25/09	Derek Baltimore	--
39.	06/25/09	David Barber	Northwestern Mutual Financial Network
40.	06/25/09	William Barber	Barber Insurance
41.	06/23/09	James Barlow	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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	Date Letter Received	Sender	Company Name
42.	06/24/09	Kevin Barnes	Farmers Agent
43.	06/26/09	W. Stanley Barnes	Fin Svcs.
44.	06/26/09	Gregory Barnett	Fin Svcs
45.	06/25/09	Alex Barnwell	--
46.	06/26/09	Rolando Barrera	--
47.	06/25/09	Lawrence C. Barrett	Sagemark Consulting
48.	06/23/09	Robert L. Barrett, Jr.	NYL
49.	06/23/09	David L. Barrist	--
50.	06/23/09	Roland Basinski	--
51.	06/23/09	Bernard Baudin	New York Life Insurance Co.
52.	06/24/09	Mark Bauman	Ameritech
53.	06/28/09	Dennis Baumhover	State Farm Insurance
54.	06/23/09	Deborah M. Beahan	--
55.	06/23/09	William Beasing	Northwestern Mutual Financial Network
56.	06/26/09	Beth Peckinpaugh Beasley	--
57.	06/23/09	Ron Becker	Forman Associates
58.	06/23/09	Jeb Beckley	Northwestern Mutual Financial Network
59.	06/25/09	John Beckwith	Beckwith Group
60.	06/23/09	Josh Beecher	Rice Brown
61.	06/25/09	Dan Beeler	Dan Beeler Agency
62.	06/29/09	Gene Beerbohm	--
63.	06/25/09	John A. Bell	--
64.	06/23/09	Kevin Bell	SBC Global
65.	06/25/09	Drew Bennett	American National Insurance
66.	06/25/09	Jim Bennett	Jim Bennett Insurance
67.	06/23/09	Kent Bennett	KA Bainc
68.	06/23/09	Lawrence A. Bennett	New York Life Insurance Co.
69.	06/29/09	Matthew Benson	Fin Svcs
70.	06/23/09	Marty Berger	--
71.	06/23/09	Thane Bernbeck	Northwestern Mutual Financial Network
72.	06/25/09	Marc Bernstein	--
73.	06/26/09	Michael B. Berry	WF Advisors
74.	06/23/09	Patricia Berry	FHB
75.	06/23/09	Roni Roslyn Berson	AM Seminars
76.	06/29/09	Gregory A. Berstler	--
77.	06/27/09	Nancy W. Bertacini	Financial Network Investment Corp
78.	06/25/09	Anthony Bertasi, Jr.	Northwestern Mutual Financial Network
79.	06/25/09	Eric Bervig	Investment Service Center
80.	06/26/09	Robbie G. Beucler, Jr.	The ONF Group
81.	06/25/09	George A. Beutter	InFarm Bureau
82.	06/23/09	Doug BeVille	Profit Plans LLC
83.	06/23/09	Samuel Bianchi	LFG

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	Date Letter Received	Sender	Company Name
84.	06/29/09	Lucas Bielfelt	--
85.	06/23/09	Laura Biesemeyer	Summit Alliance
86.	06/23/09	Jeff Biggs	FBFS
87.	06/25/09	Michael A. Biordi	AXA Advisors
88.	06/25/09	Stephen Biron	--
89.	06/26/09	Emily Blackburn	GA – Insurance
90.	06/23/09	Ronald Blau	FWG
91.	06/29/09	Josh Blevins	TFBF
92.	06/25/09	A.J. Block	--
93.	06/23/09	David Block	Insurance-Specialties
94.	06/23/09	James R. Bocinsky	Keever Capital, LLC
95.	06/28/09	Ann Boeckenstedt	AMFAM
96.	06/23/09	Lyn F. Boening	--
97.	06/24/09	Glenna Bohling	Thrivent Financial for Lutherans
98.	06/23/09	Matthew Bond	SGC Financial
99.	06/26/09	Charles D. Booth	Asset Conservation
100.	06/29/09	Earl R. Borders III	Borgers IFG
101.	06/24/09	David Boren	SBC Global
102.	06/24/09	Charles Douglas Borrell	SB Group Inc
103.	06/23/09	Shirley Boston-Otis	--
104.	06/23/09	Kurt Bogseth	Northwestern Mutual Financial Network
105.	06/23/09	Shanna Bottoms	AXA Advisors
106.	06/23/09	Terry Boulter	--
107.	06/23/09	Bruce Bowen	New York Life Insurance, Co.
108.	06/24/09	Thomas Bowen	--
109.	06/23/09	James D. Boydston	Mass Financial Group, Inc.
110.	06/25/09	Dawn Boyer	Gordon Marketing
111.	06/26/09	Greg Boyer	--
112.	06/24/09	Richard Boyer	AXA Advisors
113.	06/24/09	James Boylan	--
114.	06/24/09	Gary Bradford	Northwestern Mutual Financial Network
115.	06/23/09	Pat Bradley	LTCI Partners
116.	06/26/09	John Brady	New York Life Insurance Co.
117.	07/31/09	Lauro A. Braganza	Prudential
118.	06/23/09	Bonita Brakefield	Prudential
119.	06/25/09	John t. Branstrom	Fin Svcs
120.	06/23/09	Dean Brant	FBFS
121.	06/25/09	Don Bratcher	Bratcher Financial
122.	06/25/09	Steven Braunschweiger	Field Underwriters
123.	06/29/09	Todd Brehmer	Packerland Brokerage
124.	06/23/09	Rick D. Breinin	Country Financial
125.	06/24/09	Thomas R. Brennaman	Fin Svcs

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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126.	06/26/09	Darrel Brock	Allstate
127.	06/25/09	Albert Brodbeck	Prudential
128.	06/23/09	Thomas Brophy	--
129.	06/23/09	Emmett Brost	State Farm Insurance
130.	06/25/09	Allen Carter Brown	Ivy Insurance
131.	06/24/09	Don Brown	--
132.	06/26/09	James L. Brown	NAIFA
133.	06/25/09	Larry Brown	Met Life
134.	06/23/09	Rice Brown	--
135.	06/23/09	Robert Brunton	Northwestern Mutual Financial Network
136.	06/24/09	Grover Bryan, Jr.	Liberty Agency
137.	06/26/09	Mel Budreau	Budreau Financial
138.	06/23/09	Anthony Buechier	--
139.	06/23/09	Peter Buechler	--
140.	06/26/09	Twayne Buhler	Qwest
141.	06/26/09	Ron Bullis	Northwestern Mutual Financial Network
142.	06/23/09	Ray Bunnell	FBFS
143.	06/24/09	Don Burkall	Northwestern Mutual Financial Network
144.	06/24/09	Terry Burke	Farmers Agent
145.	06/23/09	Sylvia Burnett	--
146.	06/29/09	Garry Burry	Northwestern Mutual Financial Network
147.	06/23/09	Michael Bussard	Pacific Life
148.	06/23/09	Derek Butler	--
149.	06/23/09	Michaelene Butler	--
150.	06/26/09	Deb Butt	State Farm Insurance
151.	06/23/09	Ken Byers	--
152.	06/25/09	Karen Byrd	Jack Turner
153.	06/24/09	Michael Calabrese	--
154.	06/25/09	Mark Caldon	New York Life Insurance Co.
155.	06/28/09	Sally B. Camp	--
156.	07/06/09	Gary Campbell	Financial Advocates
157.	06/26/09	Roger Campbell	KYFB Ins.
158.	06/26/09	Taylor Campbell	--
159.	06/26/09	Thomas W. Campbell	--
160.	06/25/09	Joseph Catanzaro	--
161.	06/29/09	Jeffrey Cantrell	Bowman Gaskins
162.	06/28/09	Tony Capraro III	State Farm Insurance
163.	06/29/09	Cathy Carlson	KYFbins
164.	06/23/09	John Carlson	Am. Fam
165.	06/25/09	Glenn Carpenter	--
166.	06/27/09	Duane Carr	--
167.	06/23/09	Roderick Carr	New York Life Insurance Co.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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168.	06/25/09	Al Carrico	State Farm Insurance
169.	06/23/09	Edward Carvalho	--
170.	06/26/09	Michael Casey	ING Financial Partners
171.	06/25/09	Susan Cathey	Allstate
172.	06/23/09	Kurt Cecconi	Princor Financial Services
173.	06/23/09	Joseph Chalom	Retirement Council
174.	06/29/09	Gary F. Champa	NAIFA
175.	06/23/09	Joe Chenoweth	--
176.	06/23/09	Terry Chick	Money Geeks
177.	06/25/09	Melvin Chilewich	--
178.	06/24/09	Jan Christensen	New York Life Insurance Co.
179.	06/23/09	Kirk Chugg	--
180.	06/23/09	Ron Church	--
181.	06/25/09	Steve Church	Creative Planning Concepts
182.	06/24/09	Robert A. Cinalli	AXA-Advisors
183.	06/23/09	James Clabuesch	--
184.	06/23/09	Gary Clair	New York Life Insurance Co.
185.	06/26/09	Brian Clark	John Hancock
186.	06/23/09	Michael Clark	--
187.	06/25/09	Stephen Clark	NCFB Ins.
188.	06/23/09	Timothy Clark	New York Life Insurance Co.
189.	06/23/09	J. Brandon Clarke	Benfinancial
190.	06/23/09	Kendall Clenney	--
191.	06/25/09	Edward Clink	Cap-Ins
192.	06/26/09	James Codr	Wiigcodr
193.	06/23/09	Michael Coe	State Farm Insurance
194.	06/29/09	Scott Coenen	JH Network
195.	06/26/09	Charles Cole	DW Associates
196.	06/23/09	Jim Cole	--
197.	06/23/09	Ruth Cole	Kemneriott
198.	06/26/09	Ann Coleman	Quantumins
199.	06/25/09	Chase Coleman	State Farm Insurance
200.	06/25/09	Cyrus Coleman	New York Life Insurance Co.
201.	06/26/09	John Collier	NV Silver
202.	06/23/09	Willie Colston	Kentucky Farm Bureau
203.	06/23/09	Donald Compton	State Farm Insurance
204.	06/26/09	Shawn Connolly	AXA Advisors
205.	06/27/09	Parker Consaul	--
206.	06/25/09	Thomas Coplin	--
207.	06/23/09	Tom Corbitt	--
208.	06/23/09	Thomas Corey	--
209.	06/23/09	James Counter	JA Counter

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210.	06/23/09	Joe Counts	--
211.	06/23/09	Chad Courtois	New York Life Insurance Co.
212.	06/23/09	Jana Cowgill	Century Tel
213.	06/23/09	Mitchell Cox	NCFBINS
214.	06/26/09	Mike Crane	KYFB
215.	06/24/09	Scott A. Crawford	--
216.	06/24/09	James E. Creeden, Sr.	--
217.	06/26/09	Jan Crewes-Jones	--
218.	06/23/09	Ronald Crist	--
219.	06/23/09	Gina Cromwell	New York Life Insurance Co.
220.	06/23/09	Russell Crooks	--
221.	06/25/09	Jonathan Cross	Northwestern Mutual Financial Network
222.	06/25/09	Margaret Crossland	--
223.	06/26/09	Frank Crowe	--
224.	06/25/09	Jay B. Crowther	Allstate
225.	06/23/09	Anthony Cubellis	--
226.	06/23/09	Dennis Cuccinelli	Professional Economic Growth Group
227.	06/26/09	Brian Cunningham	In Farm Bureau
228.	06/29/09	Tim Curran	New York Life Insurance Co.
229.	06/29/09	Jon Cyganiak	Cyganiak Planning
230.	06/23/09	Gregory Daigle	Pinnacle Group
231.	06/29/09	J. 'Mike' Dalsaso	DA-Ins
232.	06/23/09	Richard Damico	My Excel
233.	06/23/09	Spencer Daniels	Fin Svcs
234.	06/24/09	Lou Danna	Danna Agency
235.	06/29/09	Carolyn Dannatt	Thrivent Financial for Lutherans
236.	06/23/09	George Danusis	--
237.	06/23/09	Mark Daoust	First Heartland
238.	06/24/09	Christi M. Daughenbaugh	Borden Hamman Agency
239.	06/25/09	Bryan K. Davis	Richmond Financial Group
240.	06/24/09	Doug Davis	Northwestern Mutual Financial Network
241.	06/23/09	Gary Davis	GLIC
242.	06/26/09	Jeff Davis	State Farm Insurance
243.	06/23/09	O. Taylor Davis	Northwestern Mutual Financial Network
244.	06/25/09	Bruce W. Dawkins	Med-Link
245.	06/25/09	Brian D. Dawson	--
246.	06/25/09	Lesley Day	Northwestern Mutual Financial Network
247.	06/23/09	Mike DeBoer	--
248.	06/23/09	William J. DeBruin	--
249.	06/25/09	Christopher DeCola	Fin Svcs.
250.	06/24/09	Laura P. DeGolier	Degolier Insurance
251.	06/25/09	Tim Deitemeyer	--

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252.	06/23/09	Troy D. DeLair	FBFS
253.	06/29/09	Christopher D. DeLarme	FI Strategies
254.	06/26/09	Thomas Deleot	Fin Svcs
255.	06/23/09	John Demboski	--
256.	06/23/09	Richard Denmark	--
257.	06/23/09	Richard Dent	New York Life Insurance Co.
258.	06/23/09	Albert Depew	--
259.	06/28/09	Peter Derrenbacher	Northwestern Mutual Financial Network
260.	06/23/09	John DeSantis	ING Financial Partners
261.	06/23/09	Eugene Devol	BRCFS
262.	06/26/09	Rick Dhabalt	--
263.	06/23/09	Donna M. DiBiasio	--
264.	06/24/09	Robert Dibley	--
265.	06/25/09	Joseph DiCandilo	--
266.	06/24/09	Anthony Dickinson	NCF Bins
267.	06/25/09	Robert A. Dicola	--
268.	06/27/09	Diane Dillett	Dillett Company
269.	06/26/09	Ronald Dilling	SBC Global
270.	06/23/09	Charles Dinise	--
271.	06/23/09	Art Dinkin	Central Financial
272.	06/23/09	R. Anthony Diregolo II	SGC-Financial
273.	06/25/09	Herman Dixon	--
274.	06/26/09	Julie Doak	Insight BB
275.	06/29/09	Richard Dobson	CFU
276.	06/25/09	Lisa Dodson	--
277.	06/29/09	Daniel E. Doerr	Thrivent Financial for Lutherans
278.	06/23/09	Troy Dollyhigh	Guilford County Farm Bureau
279.	06/25/09	Paul Donas	JH Network
280.	06/26/09	Frederick Dorn	--
281.	06/23/09	Jared Dosch	Northwestern Mutual Financial Network
282.	06/29/09	Richard Douglass	Northwestern Mutual Financial Network
283.	06/25/09	Philip Downey	Allstate
284.	06/23/09	Kimball Doxey	BenLife
285.	06/23/09	Dennis Drake	--
286.	06/23/09	David Dreifuss	TAIFP
287.	06/23/09	John Drews	--
288.	06/26/09	James Driesbach	INDY Trans
289.	06/25/09	Kirk Dryden	Johnson Dugan
290.	06/23/09	John Dugan	Prudential
291.	06/26/09	Pamela Duncan	ING Financial Partners
292.	06/25/09	Michael Dunkley	Allstate
293.	06/25/09	Hayven W. Dunn	--

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294.	06/26/09	Richard Dworsky	--
295.	06/23/09	Dave Dykstra	Heartland-Isn Group
296.	06/23/09	Andrew Dzurinko	--
297.	06/23/09	Matt Echelmeier	--
298.	06/23/09	Gary Eckelkamp	Allstate
299.	06/24/09	Wayne M. Eckman	State Farm Insurance
300.	06/23/09	Matthew Edelstein	--
301.	06/24/09	Kolleen Edwards	JK Izziah
302.	06/25/09	Rafael Ekstein	Ekstein Financial Services
303.	06/23/09	Matthew Elkins	--
304.	06/25/09	Albert Elliott	Frontier Net
305.	06/23/09	Daryl R. Ellis	New York Life Insurance Co.
306.	06/26/09	Jacob Elrod	Prudential
307.	06/29/09	Merle Elsberry	Iowa Telecom
308.	06/23/09	Ethan Emmett	--
309.	06/24/09	Philip Engelmann	Miami NEF
310.	06/23/09	Fritz Engels	--
311.	06/25/09	A. Christopher Engle	Eye On Argus
312.	06/23/09	John Enright	LFG
313.	06/23/09	Roger Entley	GFB
314.	06/29/09	Joseph Eppolito	Fin Svcs
315.	06/26/09	Robert Erkel	Northwestern Mutual Financial Network
316.	06/23/09	John Erskine	--
317.	06/23/09	Bijan Eshaghian	New York Life Insurance Co.
318.	06/26/09	Eric Evans	State Farm Insurance
319.	06/23/09	Kenneth Evans	--
320.	06/23/09	Marlene Evans	--
321.	06/23/09	Stan Evetts	Country Financial
322.	06/26/09	Robert Fahey, Jr.	The Fahey Group
323.	06/23/09	John Falgoust	New York Life Insurance Co.
324.	06/23/09	Carsten Falkenberg	Thrivent Financial for Lutherans
325.	06/25/09	Robert Farabaugh	Prudential
326.	06/25/09	Brad Farley	--
327.	06/29/09	Michael D. Farmer	--
328.	06/24/09	Paul Farr	NCFB Ins.
329.	06/23/09	Thomas Fay	--
330.	06/23/09	Vince Fazio	Northwestern Mutual Financial Network
331.	06/23/09	Norman Feinstein	Corp. Con Inc
332.	06/24/09	Dennis Felcher	Summit Brokerage
333.	06/23/09	Marvin Feldman	Feldman Financial Group
334.	06/29/09	Will Felts	Fin Svcs.
335.	06/23/09	Andrew Ferguson	Heritage Financial Services

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
336.	06/25/09	Lines R. Bob Ferguson, Jr.	New York Life Insurance Co.
337.	06/25/09	Bradley Fike	Fike Agency
338.	06/23/09	Karen Fike-Henderson	Fike Agency
339.	06/26/09	Steven Fisher	Stinkin Genius Productions
340.	06/23/09	Kevin FitzPatrick	The Cap Group
341.	06/27/09	Robert H. FitzSimmons	--
342.	06/24/09	Quin Flaig	State Farm Insurance
343.	06/23/09	Martin Flaxman	Windsor Insurance
344.	06/29/09	Helen Fliege	Thrivent Financial for Lutherans
345.	06/24/09	Sherry L. Flint	The Principal Financial Group
346.	06/23/09	Daniel J. Flores	Execfs
347.	06/29/09	Sherry Flynn	--
348.	06/23/09	Maureen E. Foley	New York Life Insurance Co.
349.	06/25/09	Robert W. Folger	--
350.	06/23/09	Grant Foster	NAIFA
351.	06/26/09	Bill Foudy	--
352.	06/26/09	Stephen Foust	Fin Svcs
353.	06/23/09	Frank Francione	--
354.	06/23/09	Steven Frank	--
355.	06/23/09	Rosie Franklin	New York Life Insurance Co.
356.	06/23/09	Sara Franklin	New York Life Insurance Co.
357.	06/25/09	Ben Freedman	New York Life Insurance Co.
358.	06/23/09	Erin Freize	Northwestern Mutual Financial Network
359.	06/23/09	Bob Frentzs	New York Life Insurance Co.
360.	06/23/09	Justin C. Frisco	Principal Financial Group
361.	06/23/09	Sue Fritz	--
362.	06/26/09	Jeffrey Fritzke	Met Life
363.	06/24/09	Heath A. Frost	Thrivent Financial for Lutherans
364.	06/25/09	Lisa Frye	State Farm Insurance
365.	06/23/09	Janelle Fuhrmann	Thrivent Financial for Lutherans
366.	06/23/09	Peter Fulchiron	--
367.	06/23/09	James M. Fuller	Snider Fuller
368.	06/25/09	Terry Fullmer	Prudential
369.	06/23/09	Donald T. Fulton	--
370.	06/23/09	Daniel Furtado	--
371.	06/23/09	Laurel Gabbard	Am Fam
372.	06/23/09	Guido Gaeffke	--
373.	06/23/09	Michael Gaeta	--
374.	06/23/09	Carisse Gafni	New York Life Insurance Co.
375.	06/25/09	Robert Gaines, Jr.	--
376.	06/23/09	Jay Gallacher	New York Life Insurance Co.
377.	06/29/09	Chris Gallman	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
378.	06/23/09	Michelle Gams	Retire Solutions
379.	06/23/09	Lawrence Ganim	Ganim Group
380.	06/29/09	Kim Garbers	Welchlin Associates
381.	06/23/09	Debra S. Garcia	SBC Global
382.	06/23/09	Frannie Gardner	Ayres Financial Group
383.	06/25/09	Vycke Garman	FBFS
384.	06/25/09	Arnette Garris	Thrivent Financial for Lutherans
385.	06/25/09	Richard Gary	SS&G Financial Services, Inc.
386.	06/23/09	Elizabeth Gavino	Lewin and Gavino
387.	06/23/09	Thomas Gearhart	Northwestern Mutual Financial Network
388.	06/23/09	Jim Geitgey	--
389.	06/26/09	Kent Georgel	Allstate
390.	06/23/09	Michael Gerber	NAIFA
391.	06/23/09	Arthur J. Gerry	J H Network
392.	06/23/09	Marshall W. Gifford	North Star Resource Group
393.	06/23/09	Steve Gifford	Mutual of Omaha
394.	06/23/09	Tom Gilbertson	AFSMN
395.	06/23/09	Keith M. Gillies	NAIFA
396.	06/29/09	Tim Gilman	Wealth SG
397.	06/26/09	F. James Ginnane	Fin Svcs
398.	06/25/09	Lloyd Ginsberg	Farmers Agent
399.	06/29/09	William Girone	--
400.	06/23/09	Melvin Glazier	Hartford Life
401.	06/26/09	Kayla Goetz	FBFS
402.	06/27/09	Dale Goff	AMPF
403.	06/23/09	Frank Golden	--
404.	06/24/09	David B. Goldfarb	Finsvcs
405.	06/26/09	Howard Gomer	Westland Insurance
406.	06/23/09	James Goodacre	SBC Global
407.	06/23/09	Shirley Goodacre	SBC Global
408.	06/23/09	Lawrence Gordon	New York Life Insurance Co.
409.	06/26/09	John Gossin	INebraska
410.	06/25/09	Eldon Gourley	Country Financial
411.	06/23/09	Roy Grady	--
412.	06/25/09	Charles Graham	Ameritech
413.	06/23/09	Robert L. Graham	Graham Advisory
414.	06/23/09	Edgar L. Graves	--
415.	06/25/09	Joseph Gray	--
416.	06/23/09	Max Greene	--
417.	06/24/09	Judy Gregory	New York Life Insurance Co.
418.	06/26/09	Jim Griffin	New York Life Insurance Co.
419.	06/23/09	Mark Griffin	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
420.	06/23/09	Robert Gruber	--
421.	06/25/09	Shawn Gruenberg	Farmers Agent
422.	06/23/09	William R. Guise	Woodmen Financial Resources
423.	06/23/09	Gary Gundell	--
424.	06/23/09	James A. Gunn	LPL Financial
425.	06/23/09	Richard A. Gurdjian	--
426.	06/23/09	Charles Guthrey	LFG
427.	06/23/09	Richard Gutner	G. F. S. Brokerage Network
428.	06/23/09	Marc Haberman	Cypress Ridge Solutions
429.	06/25/09	John C. Haffner	Northwestern Mutual Financial Network
430.	06/23/09	Jill Halker	Hardy Financial Group
431.	06/25/09	Franklin Hall	--
432.	06/23/09	Randall Hall	Northwestern Mutual Financial Network
433.	06/23/09	William Hall	Hall and Associates
434.	06/23/09	Wyatt Hall	--
435.	06/25/09	Leah Hallock	State Farm Insurance
436.	06/23/09	Michael Halloran	--
437.	06/23/09	Heidi L. Halus	New York Life Insurance Co.
438.	06/25/09	Kirk Halverson	New York Life Insurance Co.
439.	06/23/09	James J. Van Ham	Country Financial
440.	06/23/09	Augustus Hampson	Northwestern Mutual Financial Network
441.	06/24/09	Sokhalay Hang	SGC Financial
442.	06/23/09	Lars Hansen	Saz Agency
443.	06/23/09	Sharon Hansen	--
444.	06/23/09	Sherri Hansen	--
445.	06/23/09	William Hanzlik	--
446.	06/25/09	William Haraway	--
447.	06/29/09	Ron Hargis	Tinker FCU
448.	06/23/09	Charles R. (Chad) Harlan	Northwestern Mutual Financial Network
449.	06/23/09	Chris Harmon	IOMS
450.	06/23/09	Elie Harriett	--
451.	06/25/09	Rosie Harrington	AmFam
452.	06/23/09	Dwight Harris	Pension Programs
453.	06/23/09	Ron Harris	Money Concepts
454.	06/23/09	Scott Harris	Carta Group
455.	06/26/09	Stephen E. Harris	AXA Advisors
456.	06/25/09	James Harrison	Cinat Bank
457.	06/23/09	John Hartman	J. Hartman Associates
458.	06/23/09	Timothy Hartnell	Country Financial
459.	06/25/09	Donna Hatcher	Garland Ins.
460.	06/28/09	Paul Hauser	--
461.	06/23/09	Philip Hauser	Iowa Connect

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
462.	06/23/09	Gary Havir	Horace Mann
463.	06/23/09	Art Hayes	Country Financial
464.	06/24/09	J. Sadler Hayes, II	--
465.	06/23/09	Scott Haynie	C Planning
466.	06/23/09	Kenneth Head	Head Financial
467.	06/23/09	Terry Headley	Headley Scott
468.	06/25/09	Mark R. Hedge	Knights of Columbus Insurance
469.	06/23/09	David Heeter	Northwestern Mutual Financial Network
470.	06/23/09	Judy Heidesch	FBFS
471.	06/27/09	Debby Hein	State Farm Insurance
472.	06/23/09	Michael Heintz	Allstate
473.	06/26/09	Bruce C Hendrickson	--
474.	06/23/09	Keith Hennessey	FBFS
475.	06/23/09	Jason Henry	CR Wealth Management
476.	06/23/09	Don Hensley	--
477.	06/25/09	Kyle Herman	Farmers Agent
478.	06/26/09	Pauline Hermann	FBFS
479.	06/28/09	Gary Hershgordon	--
480.	06/25/09	Nancy Hertwig	New York Life Insurance Co.
481.	06/25/09	Carl Hessel	--
482.	06/23/09	Allan Hibbard	Hibbard Financial
483.	06/25/09	Mark W. Hicks	Van Fin
484.	06/23/09	Wes Higgs	AmFam
485.	06/23/09	Christopher Higman	--
486.	06/26/09	Dean Hildebrand	Agency One Insurance
487.	06/25/09	David Hilditch	Woodbury Financial
488.	06/23/09	Donald Hill	InfarmBureau
489.	06/23/09	Michael Hill	Hill Financial & Insurance Services
490.	06/25/09	Tasha Jo Hill	Capital Planners, Inc.
491.	06/23/09	Edward Dee Hinds III	Hinds Financial Group, LLC
492.	06/25/09	Thomas Hodges	--
493.	06/29/09	Bonnie B. Hoegemeyer	Heritage Planning Financial Group
494.	06/23/09	Brett J. Hoffman	The Insurance Exchange, Inc.
495.	06/23/09	Kirk Hoffman	King Trust
496.	06/24/09	Nataniel Hoffman	North Star Financial
497.	06/25/09	David Hogan	American National Insurance
498.	06/23/09	J. Quinn Hogan	Northwestern Mutual Financial Network
499.	06/23/09	Melissa Holcomb	CFA Group
500.	06/23/09	Mark Holder	Northwestern Mutual Financial Network
501.	06/25/09	Jeff J. Holland & Ashley Watts	HollandStivers & Associates, LLC
502.	06/25/09	John S. Holmes III	New York Life Insurance Co.

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
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503.	06/24/09	Stanley Holmes, Jr.	--
504.	06/25/09	Patricia Holtsclaw	MSHA
505.	06/25/09	Bryon Holz	--
506.	06/23/09	Lawrence Holzberg	Rampart Life
507.	06/23/09	Joni M. Horrell	Northwestern Mutual Financial Network
508.	06/25/09	Dennis Houlehan	Desmond Ins.
509.	06/23/09	Charles J. Housner	North Star Financial
510.	06/25/09	Janice Howard	Jan Howard Advising Your Future
511.	06/23/09	James R. Howell	Country Financial
512.	06/25/09	John Howes	State Farm Insurance
513.	06/29/09	Thomas Hruby	Paul Bunyan
514.	06/26/09	Todd Hruby	New York Life Insurance Co.
515.	06/26/09	Jerry Hubner	Hubner Financial
516.	06/25/09	George Hudspeth	--
517.	06/25/09	Robert B. Hughes	--
518.	06/23/09	Marcus Hunter	MetLife
519.	06/23/09	Matt Huntington	Farmers Agent
520.	06/25/09	Bob Hurley	AXA Advisors
521.	06/23/09	Joseph C. Hurlimann	PS&E, LLC
522.	06/25/09	Albert Hurst	--
523.	06/23/09	John Husbands	Soules Insurance
524.	06/23/09	Perry Imes	Imes Insurance Associates, Inc.
525.	06/26/09	Matt Immel	Immel Insurance & Financial Services
526.	06/29/09	David Ion	--
527.	06/23/09	Anthony Izzo	--
528.	06/25/09	Bryan Jackson	State Farm Insurance
529.	06/25/09	Jerry D. Jackson	--
530.	06/23/09	Andrew S. Jacobs	North Star Consultants, Inc.
531.	06/23/09	George A. Jacobs	Jacobs Financial
532.	06/23/09	Lewis Jacobs	Jacobs Co
533.	06/26/09	Brian D. Jacobsen	Farmers Agent
534.	06/24/09	Barbara James	Northwestern Mutual Financial Network
535.	06/26/09	Debbie Jans	--
536.	06/23/09	Douglas Jarett	--
537.	06/23/09	Richard Jasper	CFS LLC
538.	06/23/09	Robert Jenner	--
539.	06/26/09	David Jensen	Gossin Agency
540.	06/26/09	Paul S. Jensen	--
541.	06/25/09	Shawna Jewell	State Farm Insurance
542.	06/25/09	Earl Jewett	--
543.	06/23/09	Barry Johnson	--
544.	06/23/09	Chris Johnson	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
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545.	06/23/09	Clarence Johnson	--
546.	06/25/09	Dell Johnson	FBFS
547.	06/23/09	James Seth Johnson	--
548.	06/25/09	Larry G. Johnson	FB Insmi
549.	06/25/09	Mark Johnson	Thrivent Financial for Lutherans
550.	06/23/09	Scott Johnson	--
551.	06/23/09	Freddy Johnston	Farmers Insurance District Office
552.	06/25/09	Joel Johnston	--
553.	06/23/09	Danielle Johs	--
554.	06/23/09	Kevin Joiner	NCF Bins
555.	06/23/09	Robert Joki	ING Financial Partners
556.	06/26/09	Andrew Jones	Thompson Financial Group
557.	06/26/09	Brian Jones	Northwestern Mutual Financial Network
558.	06/23/09	Douglas Jones	SCFbins
559.	06/23/09	Jason Jones	--
560.	07/26/09	Maye Jones	New York Life Insurance Co.
561.	06/23/09	Tracy Jones	Ernest J. Jones Assoc., Inc.
562.	06/23/09	Patricia Jorczak	MetLife
563.	06/23/09	Charles M. Jordan III	--
564.	06/29/09	Thomas Joseph	FFS Inc.
565.	06/23/09	Fred Joyner	CBA Insure
566.	06/25/09	Bradley Justice	Northwestern Mutual Financial Network
567.	06/23/09	Gary Kallo	--
568.	06/23/09	Arnold Kaminer	Kaminer Financial Group, Ltd.
569.	06/23/09	Charles M. Kardon	Financial PG
570.	06/25/09	Sam Kashanchi	MetLife
571.	06/25/09	David Kasprowicz	--
572.	06/24/09	Leroy Kawai	Pacific Bridge
573.	06/26/09	Warren Kearns	JO Life Capital
574.	06/26/09	William Kecskemety	SBC Global
575.	06/25/09	Gregg L. Keefer	Fin Svcs
576.	06/25/09	Sandra Keenan	Woodbury Financial
577.	06/25/09	Gary Kees	Horace Mann
578.	06/25/09	Judith L. Keiner	--
579.	06/29/09	F. Nicholas Kelley	Fin Svcs
580.	06/23/09	Thecia Kelly-Smith	TK Smith
581.	06/25/09	Mike Kerns	Field Underwriters
582.	06/23/09	Ryan Keshemborg	North Star Consultants
583.	06/23/09	Jim Keung	Country Financial
584.	06/23/09	Carl L. Kickham	Fin Svcs
585.	06/23/09	Michael Kidd	Farmers Insurance and Financial Services
586.	06/23/09	Scott Kieper	MW Financial

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587.	06/23/09	GW King	--
588.	06/23/09	Jim King	Northwestern Mutual Financial Network
589.	06/29/09	Frank Kinter	--
590.	06/26/09	Wayne Kissler	State Farm Insurance
591.	06/24/09	Peter Kitzerow	--
592.	06/29/09	Jaslynn Klein	Fin Svcs
593.	06/23/09	Edward Klesack	--
594.	06/25/09	Neal Kloke	--
595.	06/23/09	Gary D. Knapp	Country Financial
596.	06/26/09	Samantha Knisley	--
597.	06/25/09	John Knott	--
598.	06/29/09	Allen Knox	Associates
599.	06/23/09	Rhonda Knudson	AmFam
600.	06/23/09	John Koehler	--
601.	06/23/09	Michael Kolb	SFBCIC
602.	06/24/09	T. Kolkmann	--
603.	06/23/09	John Korzec	--
604.	06/29/09	Luba Kos	--
605.	06/25/09	Joseph Kosek	LFG
606.	06/26/09	William "Buddy" Kotic	--
607.	06/23/09	John Kotchian	Prudential
608.	06/25/09	Paul Koverdan	KYFB Ins.
609.	06/24/09	David Krake	OA Securities
610.	06/23/09	Patricia Krarup	SBC Global
611.	06/23/09	Martin M. Krause	Profinium Insurance Agency of Fairmont, Inc
612.	06/23/09	Robert Krikourian	--
613.	06/26/09	Doug Kruce	AMFam
614.	06/29/09	Bruce Kruse	Frontier Net
615.	06/29/09	Randy Kruse	FBFS
616.	06/29/09	Lanny Kuehl	New York Life Insurance Co.
617.	06/27/09	Otto Kuehne	New York Life Insurance Co.
618.	06/23/09	Teresa Kuhn	--
619.	06/23/09	Lloyd Kull	Kull Agency
620.	06/25/09	Daniel Kunhardt	New York Life Insurance Co.
621.	06/29/09	Alexandra Kurlowicz	Metlife
622.	06/25/09	Kevin M. Kutz	Creative Insurance Solutions, LLC
623.	06/23/09	Jeff Kyle	--
624.	06/23/09	Anthony P. Ladas	--
625.	06/25/09	Keith Laidlaw	Allstate
626.	06/23/09	Frank Laise	Capital Wealth Advisory, LLC
627.	06/23/09	Scott Lake	--
628.	06/23/09	Lisa Laliberte	--

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629.	06/26/09	Jim Lammers	Lammers Financial
630.	06/25/09	Chad Langeland	Northwestern Mutual Financial Network
631.	06/23/09	Michael A. LaPorte	LaPorte Financial Group/Walnut Street Securities, Inc.
632.	06/25/09	Heath Larkin	MetLife
633.	06/23/09	Sandra Latham	LTCI Partners
634.	06/23/09	Mitch Laughton	The Laughton Company
635.	06/24/09	Drew Lawrence	--
636.	06/25/09	Marcia Lawson	Thrivent Financial for Lutherans
637.	06/25/09	Nicholas Lawton	Solidarity Financial
638.	06/25/09	David Lazell	FBFS
639.	06/26/09	J. Chris LeBlanc	MFG 4 Life
640.	06/29/09	Mark Lee	--
641.	06/26/09	Lary Lehman	--
642.	06/27/09	Henry Lehn	--
643.	06/29/09	William Lehr	--
644.	06/29/09	Jim LeMessurier	State Farm Insurance
645.	06/26/09	Lynda Lenz	--
646.	06/23/09	Nathan M. Leonardelli	Rural Ins,
647.	06/23/09	William P. Leschinsky	--
648.	06/23/09	Shayla Lester	PCRG
649.	06/26/09	John Levin	FBFS
650.	06/25/09	Michael Levin	--
651.	06/25/09	Betty A. Lewis	New York Life Insurance Co.
652.	06/29/09	Dewane Lewis	--
653.	06/23/09	Jonathan Lewis	--
654.	06/26/09	Marylee Lewis	Koptis
655.	06/23/09	Larry R. Lexow	Fin Svcs
656.	06/24/09	Kelli Liepke	Winter and Associates
657.	06/23/09	William Lind	--
658.	06/23/09	Paul A. Lindberg	3 Rivers Financial
659.	06/23/09	Karen Lindsay	TSSI
660.	06/23/09	Steven Lindsay	Thrivent Financial for Lutherans
661.	06/24/09	Brian D. Lipinski	Executive Brokerage Services, Inc.
662.	06/24/09	Les Littleton	SBC Global
663.	06/25/09	Courtney L. Livingston	Thrivent Financial for Lutherans
664.	06/26/09	Daniel T. Lloyd	--
665.	06/29/09	Sylvester Lloyd	Fin Svcs
666.	06/23/09	Jonathan Lohman	Lohman Companies
667.	06/25/09	Stan Lovelace	STG Fin.
668.	06/23/09	Doyle Lowe	TXFB-Insurance
669.	06/24/09	Daniel Lucas	--

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670.	06/23/09	Donna Ludovissy	Friedman Group
671.	06/23/09	Philip Lukins	--
672.	06/27/09	William R. Lund	--
673.	06/25/09	Patrick Lyman	--
674.	06/23/09	Karen Lynaugh	--
675.	06/23/09	Scott Macaluso	--
676.	06/25/09	Catherine MacEachen	--
677.	06/23/09	Christopher John Mackenzie	Northwestern Mutual Financial Network
678.	06/23/09	Smokey Maggard	--
679.	06/23/09	John Maggio	--
680.	06/23/09	Debra K. Maher	Thrivent Financial for Lutherans
681.	06/25/09	Tim Mahoney	New York Life Insurance Co.
682.	06/23/09	Matthew Makowski	SGC Financial
683.	06/25/09	Louis Malherbe	Farmers Agent
684.	06/23/09	Michael Malinowski	Crump
685.	06/26/09	Ron Mallam	Windstream
686.	06/23/09	Ronald Maloney	--
687.	06/29/09	Lisa Mancinelli	--
688.	06/23/09	Philip Maness	AXA Advisors
689.	06/24/09	Caroline Manger	--
690.	06/24/09	Michael Mantong	Allstate
691.	06/25/09	William Marcus	Source 1 Fin.
692.	06/25/09	Spencer Mark	Fin Svcs
693.	06/29/09	Thomas W. Markley	--
694.	06/23/09	Donald C. Marriott	New York Life Insurance Co.
695.	06/23/09	Angela Marshall	--
696.	06/28/09	E. Lindsay Marston, Jr.	--
697.	06/27/09	Ford Martin	The-CIA
698.	06/23/09	Ken Martin	Advisor Tool
699.	06/23/09	Scott Martin	--
700.	06/25/09	Karen Martinie	Northwestern Mutual Financial Network
701.	06/24/09	Brad M. Maruschak	The Spectrum Financial
702.	06/23/09	William Mathers	Thrivent Financial for Lutherans
703.	06/25/09	Michael Mathews	Northwestern Mutual Financial Network
704.	06/23/09	Terry Mathias	--
705.	06/29/09	Mark Matulia	--
706.	06/26/09	Lisa Maxwell	State Farm Insurance
707.	06/26/09	Jason May	State Farm Insurance
708.	06/25/09	Richard Maze	Woodbury Financial
709.	06/26/09	Stanly McAfee	FBFS
710.	06/23/09	Barry McBride	SunCornerstone
711.	06/23/09	Thomas McCaffrey	Allstate

REGULATORY NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
712.	06/23/09	Sean McCann	Eagle Strategies
713.	06/27/09	J. Edward McClendon	--
714.	06/25/09	Mike McClure	STGFIN
715.	06/23/09	Jay McCluskey	New York Life Insurance Co.
716.	06/25/09	Sherrell McConnell	State Farm Insurance
717.	06/24/09	Melissa McConville	Kiselis
718.	06/26/09	Larry E. McCoy	New York Life Insurance Co.
719.	06/23/09	Wayne McCullough	MFG 4 Life
720.	06/23/09	Charles McDaniels	McDainels Financial
721.	06/29/09	Ron McDonald	BBM Ins.
722.	06/25/09	John McDowell	Fin Svcs
723.	06/28/09	Phillip Shaun McDuffee	North Star Financial
724.	06/25/09	Linda McFarland	--
725.	06/28/09	Ann McGreevy	MetLife
726.	06/23/09	William K. McGreevy	McGreevy Associates
727.	06/23/09	James McGuinness	SBU Ins.
728.	06/25/09	Susan McKay	--
729.	06/26/09	Lamar McKenzie	State Farm Insurance
730.	06/25/09	Juli McNeely	McNeely Financial
731.	06/28/09	Stephen McNeely	McNeely Financial
732.	06/24/09	Howard McRoberts	--
733.	06/23/09	Larry D. Medaris	Country Financial
734.	06/23/09	Andy Meehan	eSoutheastern
735.	06/25/09	Kelly Meldrum	State Farm Insurance
736.	06/23/09	Sandra Melendi	--
737.	06/23/09	C. Kenneth Melvin	NCF bins
738.	06/25/09	Timothy Melvin	Horace Mann
739.	06/23/09	Thomas Menozi	Country Financial
740.	06/23/09	Jude Mertes	Country Financial
741.	06/27/09	Angela Muetting	Thrivent Financial for Lutherans
742.	06/23/09	David Michalski	NYLTCB
743.	06/23/09	Willis Middlemiss	--
744.	06/25/09	Tom Midkiff	--
745.	06/23/09	Joseph Mignogna	--
746.	06/25/09	Matt Miles	Miles Financial Services
747.	06/23/09	Sandra Miles	FBFS
748.	06/23/09	Carolyn Miller	General Agency Company
749.	06/23/09	Dennis Miller	--
750.	06/23/09	Jonathan Miller	--
751.	06/23/09	Michael Miller	Farmers Agent
752.	06/24/09	Thomas Miller	New York Life Insurance Co.
753.	06/29/09	David Mills	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
754.	06/23/09	Holland "Dutch" Mills	--
755.	06/23/09	Robert Mills	Mills, McCaghren & Associates
756.	06/24/09	KC Mink	TP Group
757.	06/24/09	Mark J. Modzeleski	Syracuse
758.	06/25/09	Jeff Mohr	--
759.	06/26/09	Brian C. Moldt	Moldt Financial
760.	06/25/09	Katrina Molter	--
761.	06/23/09	Michael Monroe	Allstate
762.	06/23/09	Bruce D. Moore	State Farm Insurance
763.	06/24/09	Jarrett Moore	Utulsa
764.	06/28/09	Tim Moran	--
765.	06/27/09	Jeff Morehead	Monumental Life Insurance
766.	06/23/09	Kim Morgan	--
767.	06/23/09	Nancy A. Morgan	State Farm Insurance
768.	06/29/09	Norman Morgan	--
769.	06/23/09	Robby Morris	New York Life Insurance Co.
770.	06/23/09	Travis Morrow	3 Rivers Financial
771.	06/23/09	Charles Morton	LFG
772.	06/23/09	Derrick Morton	GLIC
773.	06/23/09	Linda Morton	--
774.	06/23/09	Edward C. Moscato	Edward C. Moscato Insurance & Financial Services
775.	06/25/09	Stephen Moscinski	--
776.	06/23/09	Jim Moseley	Moseley McGill
777.	06/25/09	Connie Mosley	--
778.	06/24/09	John Mosley	Eagle Strategies
779.	06/23/09	Kent E. Moss	--
780.	06/23/09	Scott A. Mullen	PBSGO
781.	06/24/09	Larry Mullins	MCHSI
782.	06/29/09	Lisa Mulvaney	--
783.	06/25/09	Raymond Munger	Field Underwriters
784.	06/23/09	Kevin Murphey	--
785.	06/25/09	Richard C. Murphy	--
786.	06/25/09	Gregory Murray	STG Fin
787.	06/25/09	Trevor Murray	--
788.	06/23/09	Scott Nasca	Country Financial
789.	06/23/09	Jamal Nasser	--
790.	06/27/09	Brian Nauman	--
791.	06/25/09	Dallas H. Neal	--
792.	06/25/09	Dawn Nelson	--
793.	06/25/09	Mark Nelson	Allstate
794.	06/26/09	Michael Neppl	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
795.	06/24/09	Marc Neuburger	--
796.	06/26/09	Andrew Nevin	DW Associates
797.	06/24/09	Charles Newman	--
798.	06/24/09	Gerald Newton	New York Life Insurance Co.
799.	06/23/09	Thomas Newton	SBC Global
800.	06/23/09	Daniel M. Nichols	Strategic Financial Group, LLC
801.	06/25/09	Kevin Nicholson	WNFG
802.	06/26/09	Janice Ruth Nickell	Horace Mann
803.	06/25/09	Zachary A. Nielson	HFGMT West
804.	06/23/09	Richard Nilmeier	SBC Global
805.	06/23/09	Lee Ninneman	Packerland Brokerage
806.	06/23/09	Clark Nisbett	LPL Financial Advisor
807.	06/24/09	Joseph Nolan	AXA Advisors
808.	06/23/09	Barbara Norman	--
809.	06/29/09	John Norman	--
810.	06/23/09	Barbara A. Nye	J. Alden Associates, Inc.
811.	06/26/09	Brian O'Brien	Principal
812.	06/23/09	James O'Hara	Northwestern Mutual Financial Network
813.	06/23/09	Timothy O'Shea	LFG
814.	06/26/09	Ronald Oakley	WS Life
815.	06/25/09	Gregory Ochalek	Gregory & Ingrid Ochalek
816.	06/23/09	James Oder	State Farm Insurance
817.	06/23/09	Eric Odle	John Drakulich
818.	06/23/09	Patrick Olguin	--
819.	06/23/09	Rex Oliver	INFO West
820.	06/26/09	Sam Olshan	Fifth Ave. Financial
821.	06/23/09	Charles Olson	OCI Services
822.	06/23/09	Charles Olson II	OCI Services
823.	06/23/09	Mark Olson	--
824.	06/25/09	Vince Orlando	Eager 1
825.	06/23/09	Roscoe Orton	--
826.	06/26/09	Faye Osborn	--
827.	06/23/09	Daryl Osmus	Thrivent Financial for Lutherans
828.	06/29/09	Joshua T. Oswald	Northwestern Mutual Financial Network
829.	06/25/09	Christyne J. Overbeek	Northwestern Mutual Financial Network
830.	06/23/09	Todd Overbeek	Benefits That Fit
831.	06/23/09	Aldous K. Paalani	--
832.	06/23/09	W.R. Bob Page	--
833.	06/23/09	Michael Palet	--
834.	06/25/09	Paula M. Palmer	--
835.	06/25/09	Ted Paris	--
836.	06/23/09	John Park	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
837.	06/27/09	Irene Parker	--
838.	06/23/09	Shelley Parson	Farmers Agent
839.	06/26/09	Bob Parsons	Allstate
840.	06/25/09	Joe Partise	JP Advisor
841.	06/23/09	Ferlincia Patterson	State Farm Insurance
842.	06/23/09	Richard Patterson	--
843.	06/25/09	James Patton	Northwestern Mutual Financial Network
844.	06/23/09	John E. Pauley	New York Life Insurance Co.
845.	06/25/09	Matt Pawloski	State Farm Insurance
846.	06/23/09	Garry Payne	LFG
847.	06/25/09	Ronald L. Peabody	New York Life Insurance Co.
848.	06/25/09	Todd Pearson	--
849.	06/26/09	Jack Peckinpough	Peckinpough & Beasley, Inc.
850.	06/23/09	David J. Pederson	North Star Financial
851.	06/23/09	David J. Peichert	--
852.	06/23/09	George Peralta	CBS Financial
853.	06/23/09	J. Reynolds Perlee	LFG
854.	06/23/09	Les Perlson	CB Planning Corp.
855.	06/25/09	Kevin Perry	--
856.	06/26/09	Lee G. Pesakoff	Fin Svcs
857.	06/23/09	John Peters	PWSAZ
858.	06/23/09	Cynthia Petersen	--
859.	06/29/09	Brett Peterson	Benfinancial
860.	06/23/09	Derek Peterson	Northwestern Mutual Financial Network
861.	06/25/09	James G. Peterson	Marshall
862.	06/23/09	John Peterson	Dempsey Serves
863.	06/23/09	Rick Peterson	MetLife
864.	06/26/09	Peter Petrakis	New York Life Insurance Co.
865.	06/29/09	Donovan Pfaff	Fin Svcs.
866.	06/25/09	Ben Phillips	Northwestern Mutual Financial Network
867.	06/28/09	James Phillips	SBC Global
868.	06/29/09	Garry Phipps	AmFam
869.	06/23/09	Chad Picou	Affiliated Insurance
870.	06/25/09	Kelly Pinney	Mang Insurance
871.	06/25/09	Patricia Pinney	Maine Insure
872.	06/26/09	R. Jan Pinney	Pinney Insurance
873.	06/26/09	Brian Pitell	Park Avenue Securities
874.	06/26/09	Steve Politz	State Farm Insurance
875.	06/23/09	Norman Politziner	--
876.	06/23/09	Robert Pollinger	Del Mar Financial Planning
877.	06/25/09	Lesley Post	--
878.	06/25/09	Jerry Potter	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
879.	06/23/09	Charles W. Potts	--
880.	06/23/09	Mary Powers	State Farm Insurance
881.	06/26/09	Edward Prescott	PMG Financial
882.	06/25/09	Robert Preston	FDG Online
883.	06/23/09	Hillary Koritz Price	Koritz Insurance
884.	06/25/09	Michael Priganc	Fortune Financial Services
885.	06/29/09	Charles R. Pruett	Northwestern Mutual Financial Network
886.	06/26/09	Michael Pruitt II	NCFBINS
887.	06/23/09	Abe Poretz	MetLife
888.	06/23/09	Dave Quaglia	--
889.	06/29/09	Denton Quick	Thrivent Financial for Lutherans
890.	06/25/09	Larry Quigley	--
891.	06/26/09	Fred Quinn	--
892.	06/29/09	Koriahn Quint	LPL
893.	06/26/09	Lynn Quirion	Maine Insure
894.	06/29/09	Michelle Raber	--
895.	06/23/09	Brad T. Raborn	Allstate
896.	06/24/09	Duncan Radcliffe	Principal
897.	06/23/09	Rollin Radwick	The Nautilus Group
898.	06/24/09	Barry K. Rake	KA Bainc
899.	06/25/09	Silvia Ramos	Allstate
900.	06/23/09	Gregory Randolph	Northwestern Mutual Financial Network
901.	06/23/09	James Rankin	Wil Sec
902.	06/23/09	Jeffrey Ranz	Allstate
903.	06/29/09	Nancy Rausch	C.M. Smith Agency, Inc.
904.	06/26/09	Thomas Rausch	Rausch Ins.
905.	06/23/09	Don Reader	--
906.	06/25/09	Kurt Reber	Reber and Associates
907.	06/24/09	Rob Recine	NYL
908.	06/25/09	Larry Redden	Met Life
909.	06/25/09	Ottis Reed	KYFB Ins.
910.	06/23/09	Steve Reed	Northwestern Mutual Financial Network
911.	06/27/09	David J. Reedy	--
912.	06/23/09	Michael Reid	New York Life Insurance Co.
913.	06/26/09	Thomas Reikse	LTCI Partners
914.	06/25/09	Alan Resnik	Ozan & Resnik
915.	06/23/09	Dale Rettenmeier	AXA-Advisors
916.	06/23/09	Jeremy Rettick	CR Producers
917.	06/25/09	Steven Reuter	Northwestern Mutual Financial Network
918.	06/29/09	Randy Rhodes	Financial Solutions NE
919.	06/25/09	Lisa Rice	--
920.	06/25/09	William T. Rice	--

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
921.	06/25/09	Suzan K. Richar	--
922.	06/23/09	Ted L. Ridings	--
923.	06/24/09	Tom Ripperda	--
924.	06/23/09	John Rippinger	RFG Inc.
925.	06/25/09	Burt Ritchie	State Farm Insurance
926.	06/24/09	Dale Robertson	VAFB
927.	06/25/09	Patrick Robison	Northwestern Mutual Financial Network
928.	06/25/09	Meagen E. Roddy	Lifetime Financial
929.	06/25/09	Gary Roebuck	--
930.	06/25/09	Tim Roels, Jr.	Hyoder
931.	06/23/09	Darlene Roe-Poundstone	MTCO
932.	06/23/09	Randall Roethel	Roethel Financial
933.	06/29/09	Vincent B. Rogers	Compass Financial Group
934.	06/29/09	John Roland	--
935.	06/23/09	Rex Rolfig	MN Life
936.	06/25/09	Brett Romine	Country Financial
937.	06/24/09	Gregory A. Ronneburger	AXA Advisors
938.	06/29/09	Kevin R. Rood	Chartered Financial Consultant
939.	06/23/09	Howard Rosenblatt	--
940.	06/23/09	Jodi Rosenbloom	--
941.	06/23/09	Thomas Roser, Jr.	CPlanning
942.	06/23/09	Tom Rountree	Rountree AFP
943.	06/23/09	Robert Routson	New York Life Insurance Co.
944.	06/29/09	Anne M. Rubeo	--
945.	06/23/09	Gary Ruden	--
946.	06/25/09	Sheryl Ruiz	Oxbow Mkt
947.	06/26/09	Philip Russell	--
948.	06/26/09	Sarah Rutledge	OCI Services
949.	06/23/09	Ralph Sabbagh	Pacific Advisors
950.	06/26/09	Arthur Sachs	Metlife
951.	06/26/09	Jeff Sadler	--
952.	06/23/09	Gregory Sailer	Sailer Benefit
953.	06/27/09	Rich Salvin	--
954.	06/23/09	Chad Eric Salzwedel	Minnesota Financial
955.	06/23/09	Cindy Samuels	--
956.	06/25/09	William Sanderson	Your IFG
957.	06/23/09	Timothy Sands	--
958.	06/24/09	Jennifer Sauter	--
959.	06/23/09	Sean Savage	Savage and Associates
960.	06/23/09	Tom Scallon	AXA Advisors
961.	06/26/09	Tu Scaparotti	State Farm Insurance
962.	06/25/09	Gregory Scherschel	Northwestern Mutual Financial Network

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Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
963.	06/23/09	Renee Schiffhauer	--
964.	06/26/09	Joseph B. Schildt	Fin Congp
965.	06/25/09	Bradley Schlafer	Schlafer Financial
966.	06/23/09	Gregg Schlaudecker	--
967.	06/26/09	Donald Schleicher	Schleicher Financial
968.	06/26/09	Donna Schmidt	Clay and Land
969.	06/24/09	Edward Schmitt	--
970.	06/23/09	Edward Schmitz	--
971.	06/26/09	Ronald Schmitz	AXA Advisors
972.	06/23/09	Peggy D. Schneider	Allstate
973.	06/26/09	Todd Schober	Johnson Ins.
974.	06/23/09	Daniel Scholz	Qwest
975.	06/23/09	Paul Scholz	OCI Services
976.	06/25/09	Jeffrey A. Schumaker	Henriott
977.	06/23/09	Marc Schwartz	Windsor Insurance
978.	06/23/09	Camelia Scott	LMG Consulting, LLC
979.	06/26/09	Danette Scott	Gossin Agency
980.	06/25/09	Walter D. Scott	New York Life Insurance Co.
981.	06/23/09	Shannon Sealey	KSC Benefits
982.	06/23/09	Harry E Sechman	H.E. Sechman Retirement Planning
983.	06/24/09	Joe Seed	--
984.	06/25/09	Sanford Seide	--
985.	06/23/09	Jack Seligson	--
986.	06/23/09	Danielle Yvette Sellers	Prudential
987.	06/25/09	Walter J. Sexton	--
988.	06/23/09	Lawrence Shafier	Prudential
989.	06/29/09	Roy Shankel	Charter MI
990.	06/24/09	Bruce Shaw	Holmes-Shaw
991.	06/24/09	Scott W. Shaw	Veritas Strategies, Inc.
992.	06/26/09	William D. Shaw	Nav Fin
993.	06/26/09	Kenneth Shelin	Keystone FBR
994.	06/29/09	Paul Sherburne	PCTR
995.	06/23/09	Shine Shim	City Insurance
996.	06/23/09	Rex P. Shipp	Vantage Financial
997.	06/25/09	Meliss Shumaker	Jackson Brokerage
998.	06/29/09	Larry Siegfried	--
999.	06/25/09	Roger Sill	Infarm Bureau
1000.	06/23/09	David Silver	Ackley Financial Group
1001.	06/26/09	Cindy Simcox	Aflac
1002.	06/29/09	Timothy Simmons	--
1003.	06/23/09	Joshua Sirek	TC Agency
1004.	06/23/09	Marc Siverson	Wagner Financial Services

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	Date Letter Received	Sender	Company Name
1005.	06/23/09	Peter Skelton	KALF
1006.	06/23/09	Lisa Skinner	GP Com
1007.	06/25/09	Marsha H. Slater	--
1008.	06/25/09	Jeffrey Slattery	New York Life Insurance Co.
1009.	06/23/09	Aaron Smith	--
1010.	06/23/09	Charles A. Smith	TCFG-FL
1011.	06/23/09	Edward Smith	Integrated Equity
1012.	06/25/09	George P. Smith, Jr.	State Farm Insurance
1013.	06/26/09	Gerald Smith	OFG Financial
1014.	06/26/09	Pamela Smith	OFG Financial
1015.	06/23/09	Ray Smith	AIC Invest
1016.	06/26/09	Ronald J. Smith	R.J. Smith & Associates
1017.	06/23/09	Russell Smith	Torimax
1018.	06/25/09	Kathy Smithson	--
1019.	06/23/09	Craig Snavelly	Farmers Agent
1020.	06/28/09	Jack K. Snow	Triad
1021.	06/25/09	Greg Snyder	State Farm Insurance
1022.	06/29/09	Doug Snyders	MWA Rep
1023.	06/23/09	Art Sobczak	The Hartford – Cleveland Life Sales
1024.	06/26/09	David Sola	Thrivent Financial for Lutherans
1025.	06/23/09	Kathy Soonier	--
1026.	06/23/09	Glenn Sowalskie	New York Life Insurance Co.
1027.	06/29/09	K. Mark Spears	Prudential
1028.	06/25/09	Dave Spellman	--
1029.	06/26/09	Marvin Spreen	Thrivent Financial for Lutherans
1030.	06/25/09	Anthony Spurlock	--
1031.	06/24/09	Joanne Squires	New York Life Insurance Co.
1032.	06/23/09	William Stagner	--
1033.	06/23/09	Jon B. Stang	Stang Insurance Group
1034.	06/23/09	Jim Stasios	--
1035.	06/25/09	Paul Stec	Farmers Agent
1036.	06/25/09	John P. Steele	Mebc Inc.
1037.	06/26/09	Ava Steinbrink	--
1038.	06/23/09	Al Stelling	FBFS
1039.	06/25/09	Stafford Stephenson	--
1040.	06/29/09	Charles Stevens	Farmers Agent
1041.	06/25/09	Brett Stewart	FBFS
1042.	06/24/09	David Stieber	--
1043.	06/23/09	Joseph Stiles	The ONF Group
1044.	06/29/09	Michael Stimmel	FBFS
1045.	06/25/09	Anita Stinnett	AXA-Advisors
1046.	06/29/09	Lauren Stone	Lauren Stone Agency

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	Date Letter Received	Sender	Company Name
1047.	06/25/09	David L. Stratton	LFG
1048.	06/24/09	Garrick Straub	--
1049.	06/26/09	Raymond Straub	Fin Svcs
1050.	06/24/09	Thomas Straub	FAODV
1051.	06/26/09	Margaret Stubbs	--
1052.	06/23/09	Wm. M. Stubbs	Stubbs and Associates
1053.	06/29/09	James Stueck	--
1054.	06/25/09	John Styer	New York Life Insurance Co.
1055.	06/24/09	Bob Sukolsky	Northwestern Mutual Financial Network
1056.	06/23/09	John Sullivan	John Sullivan CLU
1057.	06/24/09	Peter Sullivan	Sullivan Financial Group
1058.	06/24/09	David J. Sullwold	WFG Advisors
1059.	06/23/09	Dennis Sunderman	LBL Group
1060.	06/23/09	Gary Sutter	Fin Svcs
1061.	06/25/09	Stephanie Sutter	KYFB Ins.
1062.	06/25/09	Janice Sutton	--
1063.	06/23/09	Jozef Svec	SBC Global
1064.	06/23/09	Steve Swann	State Farm Insurance
1065.	06/24/09	G. Scott Sweeney	--
1066.	06/23/09	Christopher L. Sweet	New York Life Insurance Co.
1067.	06/24/09	Robert Sweiss	Country Financial
1068.	06/26/09	Charles Swoope	New York Life Insurance Co.
1069.	06/23/09	Joseph Sztapka	MWA Rep
1070.	06/26/09	Susan Tabar	Allstate
1071.	06/24/09	Jeffrey J. Taggart	--
1072.	06/23/09	Luke Tai	Sage Point Advisor
1073.	06/23/09	Donald Talerico	Prudential
1074.	06/23/09	Mark Tan	Country Financial
1075.	06/25/09	Barney G. Tanner	New York Life Insurance Co.
1076.	06/25/09	Barney G. Tanner	New York Life Insurance Co.
1077.	06/26/09	Stephen Target	--
1078.	06/24/09	Ted Tasky	RFG Chicago
1079.	06/23/09	Matthew Tassey	Scribner Insurance
1080.	06/26/09	Edward Tate, Jr.	SBC Global
1081.	06/25/09	Robert L. Taylor	--
1082.	06/23/09	David Teche	CFSL Inc.
1083.	06/23/09	Randall Teegardin	360 Financial Partners, LLC
1084.	06/23/09	Mark Teitelman	Insurance PA
1085.	06/29/09	Kimberley Templin	--
1086.	06/29/09	Michael Theis	I Nebraska
1087.	06/23/09	Steven B. Theising	Ins Bus Plan
1088.	06/24/09	Brent D. Thoman	BPFS, Inc.

REGULATORY NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1089.	06/23/09	Robert Thunselle	Thrivent Financial for Lutherans
1090.	06/24/09	Lynn Thurgood	Benfinancial
1091.	06/25/09	Robin Thurston	Sacoriver
1092.	06/25/09	Deborah Tiell	--
1093.	06/23/09	Frankie Tilley	--
1094.	06/23/09	Mark Tiralosi	--
1095.	06/23/09	William Toay	--
1096.	06/23/09	Christopher G. Tobey	--
1097.	06/23/09	John O. Todd III	Northwestern Mutual Financial Network
1098.	06/24/09	Ben Tomaino	Allstate
1099.	06/24/09	Kathleen Totman	--
1100.	06/29/09	Charlie Totoro	State Farm Insurance
1101.	06/23/09	David L. Towry, Sr.	New York Life Insurance Co.
1102.	06/25/09	Stephen Travers	Western Rivers
1103.	06/25/09	Vitamarie Trincali	MetLife
1104.	06/23/09	Chad Troester	Mutual of Omaha
1105.	06/24/09	Jim Trout	--
1106.	06/23/09	William J. Trueman	AAA Michigan
1107.	06/26/09	Kenneth Truman	New York Life Insurance Co.
1108.	06/23/09	Frederick Tucker	Biddle Services
1109.	06/23/09	John Tucker	--
1110.	06/26/09	Mitchell Tunink	Gossin Agency
1111.	06/26/09	Brian D. Turner	FBFS
1112.	06/23/09	Frederick Turner	--
1113.	06/23/09	Lynda D. Turner	AXA Advisors
1114.	06/23/09	Karin Tyson	The AFP Group
1115.	06/25/09	Charmaine Uhrig	State Farm Insurance
1116.	06/25/09	Stephen Urash	Prudential
1117.	06/25/09	Stuart Valen	AXA Advisors
1118.	06/23/09	Peter Valeri	Valeri Agency
1119.	06/25/09	Ralph Van Winkle	VWIG
1120.	06/23/09	Phillip A. Vance	--
1121.	06/23/09	Robert Vandy	--
1122.	06/23/09	Harriet A. Veenker	North Woods Retirement Services
1123.	06/24/09	Julie A. Veltus	Fin Svcs
1124.	06/25/09	Michael Venters	ANPACNM
1125.	06/25/09	Thomas Vickers III	FPA Wealth Mgmt
1126.	06/29/09	Peter Viliesis	The Executive Benefits Guy
1127.	06/25/09	George M. Villa	MTCO
1128.	06/25/09	Michele Vitale	--
1129.	06/23/09	Tom Voake	Effective Choices
1130.	06/23/09	Tom Vorenberg	Vorenberg Associates

REGULATORY NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1131.	06/25/09	Kristopher Wadsworth	MetLife
1132.	06/23/09	Allen Wagner	--
1133.	06/23/09	Gloria Wagner	Met Life
1134.	06/26/09	Thomas Wagner	Fin Svcs
1135.	06/23/09	Wayne T. Wagner	New York Life Insurance Co.
1136.	06/23/09	William Wagner	--
1137.	06/23/09	Brian H. Wahe	Fin Svcs
1138.	06/25/09	Robert E. Wahrman	FBFS
1139.	06/26/09	John Walker	FB Ins Mi
1140.	06/23/09	Leigh Wallace	--
1141.	06/23/09	Richard W. Walsh	Walsh Financial Services
1142.	06/23/09	Jerry Ward	--
1143.	06/23/09	Peirce Ward	--
1144.	06/24/09	Roy Ward	State Farm Insurance
1145.	06/26/09	Thomas Waring, Jr.	Fin Svcs
1146.	06/26/09	Terry Washburn	ANPAC ANICO
1147.	06/26/09	Dr. Napoleon Washington, Jr.	SBC Global
1148.	06/25/09	Wesley Watkins	UDB Insurance
1149.	06/26/09	Cynthia S. Watson	--
1150.	06/26/09	Sherry L. Watson	--
1151.	06/23/09	Sandra Way	--
1152.	06/23/09	Steve Way	--
1153.	06/29/09	Toni Weaver	Future Focus Financial
1154.	06/23/09	Eric Weinberg	--
1155.	06/23/09	Richard Weinerman	LFG
1156.	06/23/09	Scott Weinstein	--
1157.	06/23/09	John Weiss	--
1158.	06/23/09	Kirsten Weiss	--
1159.	06/25/09	Thomas Weiss	Fin Svcs
1160.	06/25/09	Daniel Wells	Farmers Agent
1161.	06/26/09	Kathleen A. Wells	--
1162.	06/26/09	Marlin D. Wells	AXA Advisors
1163.	06/25/09	Herman Werner	--
1164.	06/23/09	Robert West	--
1165.	06/29/09	Keith Westbrook	--
1166.	06/23/09	Bonita Westfall	--
1167.	06/28/09	Paul Westhoven	MetLife
1168.	06/25/09	Bradley Wethington	SBC Global
1169.	06/23/09	Gail A. Wetzork	--
1170.	06/29/09	Sandy Wheaton	ING Financial Partners
1171.	06/23/09	Roger Whitaker	--
1172.	06/25/09	Brad White	P Financial

REGULATORY NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
FORM B COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1173.	06/26/09	David White	DW Associates
1174.	06/25/09	Peter White	PFinancial
1175.	06/25/09	Donna Whited	--
1176.	06/25/09	Jan Whitehead	State Farm Insurance
1177.	06/25/09	Robert S. Whitmore	Discover CFI
1178.	06/25/09	Stephanie Whitson	--
1179.	06/26/09	Roger Whittaker	--
1180.	06/25/09	Stephen Widmer	IDFB Ins.
1181.	06/23/09	Allen L. Wiederstein	Allstate
1182.	06/23/09	Susan Wier	1 st American Trust
1183.	06/23/09	Evan Wilbanks	New York Life Insurance Co.
1184.	06/23/09	Mike Wilcox	MetLife
1185.	06/26/09	Thomas Wilkinson	Heritage Financial Services
1186.	06/25/09	Jennifer Williams	--
1187.	06/23/09	Arthur Wilson	--
1188.	06/26/09	Cliff F. Wilson	SAZ Agency
1189.	06/23/09	Clint Wilson	State Farm Insurance
1190.	06/23/09	Joseph Winslow	SGC Financial
1191.	06/25/09	Ronald B. Wiser	--
1192.	06/23/09	John M. Woleben	Friedman Insurance
1193.	06/23/09	Dwynette Wood	Medford
1194.	06/23/09	Barry Woolard	NCFbins
1195.	06/23/09	Marles Wyman	Douglas GRP Inc.
1196.	06/23/09	Wynn Hall	--
1197.	06/25/09	Don Yates	FBFS
1198.	06/23/09	Joe Yeager	Schafer Agency
1199.	06/29/09	Manny Yifat	Cornellins
1200.	06/25/09	Lawrence D. Yingling, Jr.	MetLife
1201.	06/29/09	J. Kenneth Yonan	--
1202.	06/25/09	James Young	Syracuse
1203.	06/23/09	Anthony Zambri	--

NOTICE 09-25			
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations			
INDIVIDUAL COMMENT LETTERS			
	Date Letter Received	Sender	Company Name
1.	06/28/09	Ralph G Adamo	Integrity
2.	06/29/09	Andrew S Adil	CM Smith
3.	06/23/09	Aaron Agte	Vantage Wealth Management LLC
4.	06/26/09	Andrew K. Alepra	LPL Financial Services
5.	06/23/09	Byron F. Allen	American Savings Life Insurance Company
6.	06/25/09	George R. Allen	Northwestern Mutual Financial Network ("NMFN")
7.	06/26/09	Reid L Allen	Income Architects
8.	06/29/09	Amal Aly	SIFMA
9.	06/05/09	Antonio L. Amante	--
10.	06/23/09	Adam G Anderson	NMFN
11.	06/25/09	Sue Anderson	State Farm Insurance
12.	06/24/09	Terry Anderson	One America Securities
13.	06/24/09	Deborah Ann	Great American Senior Benefits
14.	06/23/09	Geoffrey Arnold	Benfinancial
15.	06/25/09	Gene R. Auriemma	Independent Insurance Agent
16.	06/25/09	Jerry Bailey	One America Securities
17.	06/06/09	William Baker	--
18.	06/23/09	Beverly Barr	Bar Associates, Inc
19.	06/24/09	Joe Bartkoski	Bankers & Investors, Inc.
20.	06/23/09	David P Bartnett	Finsvcs
21.	06/25/09	Tom R Baughman	Finsvcs
22.	06/26/09	Mark Bauman	Union Central Life
23.	06/25/09	Michael Bennetti	--
24.	06/23/09	Michael Berenson	Morgan, Lewis & Bockius LLP
25.	06/25/09	Robert S Berz	Berz, White & Cooper
26.	06/23/09	Doug Beville	Profit Plans LLC
27.	06/24/09	Debra J Blair	FOADV
28.	06/23/09	Bronislaus Blaszkowski	Metlife
29.	06/26/09	Derek D Bohne	Farm Bureau Financial Services
30.	06/25/09	Norm Bohnert	State Farm Insurance
31.	06/23/09	Scott Bolitho	Glenwood Insurance Agency
32.	06/23/09	Peter L. Borowski	--
33.	06/23/09	Marlene Bowen	Mehring Associates
34.	06/23/09	Richard N. Bowes	--
35.	06/21/09	Stuart D. Boxenbaum	--
36.	06/25/09	Douglas M. Brauer	Pacific Advisors, Inc.

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
37.	06/29/09	Dale E Brown	Financial Services Institute (FSI)
38.	06/25/09	Robin Brown	State Farm Insurance
39.	06/26/09	Sharon Brown	State Farm Insurance
40.	06/29/09	Stephanie L Brown	LPL Financial
41.	06/23/09	Gloria J. Bruner	Phares Financial Services, Inc.
42.	06/24/09	Grover C. Bryan, Jr.	Liberty Agency
43.	06/23/09	Yvonne G. Bryant	IPASS
44.	06/29/09	Steve Buchanan	NCFBINS
45.	06/25/09	John Burlingame	Farmers Agent
46.	06/29/09	George E Burnette	--
47.	06/25/09	Wanda Caffrey	Ameritas Investment Corp.
48.	06/25/09	Tony Cammack	Cable Lynx
49.	06/23/09	Mark Cannon	Mark Cannon Insurance
50.	06/25/09	Mike Carney	Luttner Financial Group
51.	06/24/09	Tom Carsten	New York Life Insurance Co
52.	06/29/09	Robert R Carter and David A Stertz	Association for Advanced Life Underwriting (AALU)
53.	06/29/09	Steven B Caruso	Maddox Hargett & Caruso, PC
54.	06/24/09	Glen Castle	Western Southern Life
55.	06/03/09	Peter J. Chepucavage	International Association of Small Broker Dealers and Advisors (Plexus Consulting LLC)
56.	06/25/09	Jake Chesney	O.N. Equity Sales Company
57.	07/16/09	Ernest A Chletcos	New York Life Insurance Company
58.	06/24/09	Marlene Ciapetti	--
59.	06/23/09	Lorry Ciporkin	Ciporkin Care
60.	06/24/09	Larry C. Clayton	CFH Financial Services, Inc.
61.	06/26/09	Kris Cloyd	--
62.	07/21/09	G Ted Coene	Pacific Southwest Region
63.	06/24/09	Steven C. Colson	OFG Financial
64.	06/25/09	Bill Conley	State Farm Insurance
65.	06/25/09	Buell Connell	State Farm Insurance
66.	06/25/09	Bob Coode	Skoda Minotti
67.	06/08/09	Phillip M. Cook	The Merlin Group
68.	06/25/09	Timothy J Copeland	Virginia Farm Bureau Insurance
69.	06/23/09	Maxwell A. Coulliette	Intermountain Financial Advisors, Inc.
70.	06/26/09	Bill Cox	Financial Services
71.	06/23/09	Jamie Cox	Axcess Financial Group
72.	06/26/09	George Coxhead	--

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
73.	06/18/09	Nick Cozzone	Woodbury Financial
74.	06/23/09	Gerald W Craft	NAIFA
75.	06/24/09	Thomas R. Crane, Jr.	Lincoln Securities
76.	06/25/09	Beverly Crangle	--
77.	06/23/09	Peter W. Crimmins	PSFIN
78.	06/23/09	Elmo Cure, Jr.	Cure Financial
79.	06/26/09	Alan J Cyr	Cyr & Cyr Insurance Services
80.	06/24/09	Roy L. Dalessandro	--
81.	06/25/09	Brendan Daly	Commonwealth Financial Network
82.	06/30/09	John M Damgard	Futures Industry Association ("FIA")
83.	06/24/09	William M. Daubenmire	Western-Southern
84.	05/26/09	Charles E Day, Jr	Mutual of Omaha
85.	06/29/09	H. Keith de Noble	deNoble and James
86.	06/24/09	Merrell E. Dean	--
87.	06/23/09	Scott Dean	Anrest Bank Group
88.	06/26/09	Christine Denham	Raymond James
89.	06/29/09	Renee Dietz	National Planning Corp.
90.	06/25/09	David M. Dinn	--
91.	06/24/09	Craig W. Dolan	FedIns
92.	06/23/09	Marty Dooley	Highland Capital Brokerage
93.	06/03/09	Bob Douchette	Financial Brokerage, Inc.
94.	06/23/09	Ranny Duncan	First Western Agency, LLC
95.	06/23/09	Tom Dunn	Wollman Insurance
96.	06/23/09	Matt Echelmeier	Echelmeier Insurance Agency
97.	06/29/09	Howard B Edelstein	Edelstein Financial Corporation
98.	06/29/09	Oscar D Edmiston	SBC Global
99.	06/23/09	Adam J Edwards	NMFN
100.	06/26/09	David M. Edwards	Princor
101.	06/26/09	Ross Elliott	--
102.	06/26/09	David Ellis	Beneficial Financial Group
103.	06/08/09	Paul B. Epstein	Epstein Insurance Services
104.	06/23/09	Jay Eslick	--
105.	06/24/09	Barry D Estell	--
106.	06/23/09	Chris Everett	Everett and Associates
107.	06/26/09	Carol N. Falke	Seymour and Associates
108.	06/29/09	Matthew Farley	Drinker Biddle & Reath LLP
109.	06/23/09	James J. Feist	Fifth Avenue Agency
110.	06/28/09	Jeffrey A Feldman	--

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
111.	06/25/09	Sal Ferraro	Independent Insurance Agent
112.	06/26/09	Martin Ferrell	Ferrell Financial, LLC
113.	06/28/09	Brenton L Fewox	The Oxford Group, LLC
114.	06/29/09	Calvin M Finn	Northwestern Mutual Financial Network
115.	06/23/09	David J. Fisher	Ackley Financial Group, Inc
116.	06/25/09	Paul W. Fitzgerald	Northwestern Mutual Financial Network
117.	06/29/09	Daniel A. Flees	McNeely Financial Services, Inc
118.	06/24/09	John Floyd	Floyd Financial Services
119.	06/26/09	Gerald F. Foran, Jr.	GF Pension Corp.
120.	06/23/09	Ralph Ford	State Farm Insurance
121.	06/24/09	Charles Fradkin	--
122.	06/17/09	William Franke	Raymond James
123.	06/23/09	Douglas R. Franklin	Champagne Financial Network
124.	06/28/09	Elaine Fremling	--
125.	06/23/09	James Freudenberger	AXA Advisors
126.	06/17/09	Pam Fritz	Modern Woodmen of America ("WMA")
127.	06/25/09	Ken Gamelin	First American Capital & Trading Corp.
128.	06/23/09	Bret Gardner	NMFN
129.	06/25/09	Kenneth D. Gardopce	--
130.	06/24/09	James W. Gates	Fells Ridge Financial
131.	06/26/09	Julie J Gebert	Cambridge Investment Research, Inc
132.	06/25/09	Mark George	ISSUE Insurance Agency
133.	06/25/09	J. David Gibson	New York Life Insurance Co.
134.	06/26/09	P. Kevin Gilman	Northwestern Mutual Financial Network
135.	06/24/09	Wayne F. Gledhill	Oxford Financial Group
136.	06/23/09	Rod L. Goeman	Farmers Insurance Group
137.	06/29/09	Stanley F Goodin	New York Life
138.	06/25/09	Denise Gott	LTC Financial Partners, LLC
139.	06/23/09	James R. Gray	Country Financial
140.	06/17/09	Fred Greene	Woodforest Financial Services Inc.
141.	06/22/09	Max Greene	Max Greene Financial Services Group, LLC
142.	06/29/09	Jill I Gross & Barbara Black	Pace University School of Law
143.	06/23/09	Jerry N. Grove	Grove & Associates
144.	06/29/09	Daniel R. Guerette	Ryoal Alliance Associates, Inc
145.	06/24/09	Carol Guerieri	Policyowner Advisory, Inc.
146.	06/26/09	Mark Gurley	Northwestern Mutual Financial Network
147.	06/25/09	Kurt T. Haibach	Gary B. Haibach & Associates

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
148.	06/23/09	Cecile A Haines	Park Avenue Investments
149.	06/25/09	Kirk M. Halverson	New York Life Insurance Co.
150.	06/23/09	Steve Hamilton	Legacy Planning Partners Inc
151.	06/25/09	Karen R. Hammond	The Hammond Agency, Inc.
152.	07/01/09	James L. Harding	James L. Harding & Associates, Inc.
153.	06/23/09	Lorne Hargis	--
154.	06/26/09	Peter Harrington, Christine Lazaro, and Lisa A. Catalano	St John's University School of Law
155.	06/23/09	Stephen E. Harris	AXA Advisors, LLC
156.	06/25/09	Jim Harter	Insurance and Planning Solutions
157.	06/06/09	S. Robert Hartman	--
158.	06/29/09	Bari Havlik	Charles Schwab & Co, Inc.
159.	06/23/09	Donald E. Hedrick	--
160.	06/25/09	Jeffery Heilesen	Northwestern Mutual Financial Network
161.	06/23/09	Dave Henderson	Pacific Life
162.	06/23/09	Rick Henks	Henks Financial Group
163.	06/26/09	Thomas H. Herlong	The Herlong Financial Group
164.	06/25/09	Geoffrey Herring	Insured Financial Solutions, LLC
165.	06/25/09	Nancy P. Hertwig	New York Life Insurance Co.
166.	06/23/09	David R. Hill	SGC Financial
167.	06/23/09	Wayne Hillman	Financial Designs, Inc.
168.	06/29/09	Joan Hinchman	National Society of Compliance Prof. ("NSCP")
169.	06/23/09	Donald E Hines	Thrivent Financial for Lutherans
170.	06/25/09	Howard D. Hines	AXA Advisors
171.	06/23/09	Scott M. Hinman	National Life Insurance Co.
172.	06/29/09	Michael J Hogan	FOLIOfn Investments, Inc
173.	06/08/09	Michael A. Howard	The Howard Group Financial Services
174.	06/24/09	Eric Howell	--
175.	06/24/09	Dennis Hruby	--
176.	06/23/09	Bruce Hubbard	--
177.	06/25/09	Chuck Hudspeth	--
178.	06/29/09	David L Hunke	TierOne Financial
179.	06/25/09	Carol Hurley	Hurley Associates
180.	06/26/09	Vicki Hutchens-Bennett	New York Life Insurance Co.
181.	06/26/09	Michael Isaac	J.P. Turner & Company
182.	06/25/09	George W. Jackson	--
183.	06/27/09	William A Jacobson	Cornell University – Cornell Law School

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
184.	06/23/09	David C Janson	Modern Woodmen of America (“WMA”)
185.	06/23/09	Steven D. Jedlund	North Star Resource Group
186.	06/26/09	Todd Jensen	--
187.	06/26/09	Rod Jewell	Financial Services
188.	06/29/09	Ann W Johnson	LUTCF
189.	06/23/09	Diana Johnston	J.A. Counter & Associates Inc
190.	06/26/09	Robert B Joki	ING Financial Partners
191.	06/25/09	Stephen Kagawa	The Pacific Bridge Companies
192.	06/08/09	Grover Kahl	G.T. Kahl Financial Services LLC
193.	06/25/09	Austin A. Kanter	Kanter Associates
194.	06/25/09	Daniel L Kanter	Kanter Associates
195.	06/23/09	Derenda Keating	State Farm Insurance
196.	06/29/09	Clifford E Kirsch	John Hancock Life Insurance Co., MetLife, Inc, and The Prudential Life Insurance Co. of America
197.	06/29/09	Clifford Kirsch and Eric Arnold	Committee of Annuity Insurers
198.	06/23/09	Victor W. Kirsch	--
199.	06/29/09	Douglas Klein	Investment Literacy
200.	06/29/09	Steve Klein	Farmers Financial Solutions
201.	06/23/09	Henry P. Knickerbocker III	Niemann General Agency
202.	06/29/09	Raymond D Kojetin	--
203.	06/24/09	David M. Koll	Mutual of Omaha
204.	06/23/09	John Korzec	New York Life Insurance Co.
205.	06/29/09	Kristian P. Kraszewski	Levin Law
206.	06/26/09	Barbara L Kreifels	New York Life Insurance Company
207.	06/29/09	James Kruzan	Raymond James
208.	06/23/09	Jerry K. Kuhlmann	--
209.	06/25/09	Robert J Lafaro	Mantsch-Lafaro Insurance Agency
210.	06/29/09	Christopher P. Laia	Financial Advice and Solutions Group
211.	06/23/09	Allen Lakner	Lamb Financial Services
212.	06/25/09	James Landon	ARGOFA
213.	07/02/09	Terri Landry	State Farm Insurance
214.	06/26/09	R. Mike Latta	Intrusco
215.	06/23/09	John Lawler	McGreevy & Assoc
216.	06/23/09	Dirk P.C. Lawson	Northwestern Mutual Financial Network
217.	06/23/09	Jeff Layne	Capitol Financial Solutions
218.	06/01/09	Royal Lea	Bingham & Lea, PC
219.	06/23/09	Jim C. Leap	JC Leap Insurance Services

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
220.	06/25/09	Deborah Lederman	Lederman Financial Strategies LLC
221.	06/26/09	Jim Leggott	Ameritas Investment Corp.
222.	06/26/09	Bob Lindboe	Pinney Insurance Center
223.	06/27/09	Prof. Seth E. Lipner	Zicklin School of Business – Baruch College, CUNY
224.	06/29/09	James Livingston	National Planning National Holdings, Inc
225.	06/25/09	Mark Loftis	New England Securities
226.	06/29/09	Ronald C Long	Wells Fargo Advisors
227.	06/25/09	Les Von Losberg	--
228.	06/29/09	Bret Maffett	CM Smith
229.	06/23/09	Jonathan A. Magno	Highland Capital Brokerage Northwest
230.	06/23/09	Melvin Maltz	Lone Star Advisory Group
231.	06/25/09	Patrick Manning	Capital Planners
232.	06/23/09	Connie Marcum	Marcum Benefit
233.	06/30/09	John S. Markle	TD Ameritrade Holding Corporation
234.	06/25/09	Jay H. Marks	JHM Financial Services Group, Inc.
235.	06/25/09	Ed Martell	Ed Martell & Associates
236.	06/23/09	David J. Martinez	Insurance Planning Services, Inc.
237.	06/25/09	Jennifer Maughan	Benfinancial
238.	06/29/09	Sarah McCafferty	T. Rowe Price Investment Services, Inc
239.	06/29/09	Steven M McCauley	Law Offices of Charles C. Mihalek
240.	06/25/09	Stephen R. McDanald	Northwestern Mutual Financial Network
241.	06/23/09	Edwin McKnight	McKnight Financial
242.	06/23/09	Michael J. McNair	Principal
243.	06/29/09	Thomas McNeely	First Bankers' Banc Securities
244.	06/23/09	James McPartland	True North Companies
245.	06/29/09	Michael T McRaith	Illinois Department of Insurance
246.	06/25/09	Roy Mears	Insurance Agent
247.	06/25/09	S. Medler	--
248.	06/23/09	Walter F. Meinhart	Principal Financial Group
249.	06/25/09	Owen Menchhofer	EquiTrust Marketing Securities, LLC
250.	06/26/09	Brian J. Metzger	CRUMP Insurance Group
251.	06/23/09	Mgump6@aol.com	--
252.	06/25/09	David A. Middaugh	Middaugh & Associates, Inc.
253.	06/23/09	Joe Mignogna	Andraos
254.	06/26/09	Shawn Mihal	GA Advisors
255.	06/29/09	Charles C Mihalek	Law Offices of Charles C. Mihalek
256.	06/25/09	Roger Miles	Miles Financial Services, Inc.

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
257.	06/23/09	Mark Miller	Ameritas Investment Corp.
258.	06/23/09	Owen Miller	--
259.	06/29/09	Richard Miller	Northwestern Mutual Financial Network
260.	06/23/09	F. John Millette	IMG Financial Group
261.	06/25/09	Chris Milsom	State Farm Insurance
262.	06/25/09	Jay Mitchell	Shelter Insurance
263.	06/23/09	David Montemurro	--
264.	06/28/09	Errold F Moody, Jr	EF Moody
265.	06/23/09	Tom Moore	SBC Global
266.	06/23/09	David Morse	Country Financial
267.	06/23/09	Derrick P. Morton	Redbud Financial Group
268.	06/18/09	Daniel A. Murphy	PlanMember Securities Corporation (PSEC)
269.	06/02/09	Neal Nakagiri	NPB Financial Group, LLC
270.	06/23/09	Michael Nakashima	Innovate Financial, Inc.
271.	06/29/09	Maurice L Naylor III	The Financial Architects
272.	06/30/09	Michael Negley	Fin Svcs
273.	06/24/09	David Neuman	Stoltmann Law Offices, P.C.
274.	06/25/09	Robert Newman Newman	--
275.	06/23/09	Steve Nimmer	Wisconsin College Planning, LLC
276.	06/23/09	Mike Nitchen	--
277.	06/26/09	Martin F. O'Brien	Principal Financial Group
278.	06/24/09	Joseph F. O'Connor	Northwestern Mutual Financial Network
279.	06/23/09	Richard C. Orvis	Principal Life Insurance Co.
280.	06/23/09	Douglas Osborne	--
281.	06/29/09	Michael Pagano	1 st Global
282.	06/23/09	Paul Parker	State Farm Insurance
283.	06/23/09	Denwood Parrish	--
284.	06/26/09	Barton C. Pasco	Pasco Financial Group, LLC
285.	06/23/09	Bill Peckinpugh	Peckinpugh Financial Group
286.	06/26/09	E. Lewis Penfield, Jr.	--
287.	06/23/09	George E. Peralta	Cullum & Burks Securities
288.	06/29/09	Brian R Phares	Phares Financial
289.	06/30/09	Patricia Miller Picardi	Independence Planning Group
290.	06/23/09	F. Joseph Pickett	--
291.	06/25/09	George B. Pickett	Pickett, Bradford & Associates
292.	06/29/09	Robert C Port	Cohen Goldstein Port & Gottlieb, LLP
293.	06/27/09	Rick Powell	Financial Service Professionals ("FSP")

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
294.	06/24/09	G. T. Powers, Jr.	G. T. Powers, Jr. & Associates
295.	06/29/09	Richard Paul Probst	LPL Investment Advisor
296.	06/25/09	Mark Prudhomme	Northwestern Mutual Financial Network
297.	06/25/09	Ray Quint	Financial Decisions Group
298.	06/23/09	Diana Radabaugh	American Family Insurance
299.	06/26/09	Steven Blake Rainey	Safe Planning, Inc.
300.	06/23/09	Larry B. Rash	New York Life Insurance Co.
301.	06/23/09	Ronald Reimert	NAIFA-WV
302.	06/29/09	Marvin R Reynolds	Oxford Financial Group
303.	06/24/09	Tom Riekse, Jr.	LTCI Partners, LLC
304.	06/25/09	Z. Jane Riley	The Leaders Group, Inc/TLG Advisors, Inc.
305.	06/26/09	William Roberts	Farm Bureau Financial Services
306.	07/01/09	Judith Romaine	UBS Securities LLC
307.	06/29/09	Daniel C Rome	Taurus Compliance Consulting LLC
308.	06/29/09	Alin Rosca	JSC Ltd
309.	06/30/09	Lisa Roth	National Association of Independent Broker-Dealers, Inc. ("NAIBD")
310.	06/29/09	Daniel L Russell	Russell Financial Services, LLC
311.	06/25/09	Eben H. Sales	RCN
312.	06/25/09	David Salminen	ING Financial Partners
313.	06/29/09	Tamara K Salmon	Investment Company Institute ("ICI")
314.	06/26/09	Landon Samuel	State Farm Insurance
315.	06/29/09	Gary A Sanders	National Association of Insurance and Financial Advisors (NAIFA)
316.	06/23/09	Kendall Schlake	Farm Bureau Financial Services
317.	06/23/09	Michael Schmitz	SGC Financial
318.	06/23/09	Thomas & Wendy Schreiner	KOFC
319.	06/23/09	David M. Schuman	Farmers Agent
320.	06/23/09	Jerry A. Schutte	Northwestern Mutual Financial Network
321.	06/25/09	Steve Van Scoik	Holmes Insurance
322.	06/23/09	Mark Scott	Headley Scott
323.	06/26/09	Theodore A. Scroback	--
324.	06/23/09	Victoria M Seedhouse	Yellowstone Financial Consultants
325.	06/27/09	Edward G. Sella	SPC Financial, Inc.
326.	06/26/09	Greg Sernett	Ameritas Investment Corp
327.	06/29/09	Thomas W. Sexton	National Futures Association ("NFA")
328.	07/01/09	Mansukh J. Shah	AXA Advisors, LLC
329.	06/26/09	Scott R. Shewan	Born, Pape & Shewan, LLP

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
330.	06/29/09	Birgitta K Siegel	Syracuse University
331.	06/24/09	Barbara Silvey	--
332.	06/25/09	Ben C Sims	Sims & Associates
333.	06/26/09	Andy Small	Scottrade
334.	06/26/09	Brian N. Smiley	Public Investors Arbitration Bar Association (PIABA)
335.	06/25/09	Brian D Smith	Vista Pointe Wealth Solutions
336.	06/23/09	Dixie Hughes Smith	Eagle Strategies LLC
337.	06/29/09	Ken Smith	--
338.	06/25/09	Mark Smith	Western & Southern Financial Group
339.	06/29/09	Robert O Smith	Northwestern Mutual Finance Network (NMFN)
340.	06/22/09	David M. Sobel	Able/Noser Corp.
341.	06/26/09	David M. Sobel	Abel/Noser Corp.
342.	06/23/09	Matthew Spangler	John Hancock Financial Network
343.	06/25/09	Thomas H. Staebler	The Staebler Group
344.	06/23/09	Lee Staniar	ING
345.	06/26/09	Jack Stanton	--
346.	07/13/09	Rex A Staples	North American Securities Administrators Association, Inc. (NASAA)
347.	06/24/09	Bradley R Stark	Florida Int'l University - Miami
348.	06/23/09	Sternman	--
349.	06/29/09	Matthew R. Stout	Integrity
350.	06/25/09	Mike Struebing	Heritage Financial Services
351.	06/05/09	Summit Theological	--
352.	06/26/09	David Sunderland	The Sunderland Group
353.	06/23/09	Paul SuPrise	First Capital Benefits Group
354.	06/23/09	Rona Swanson	American National Insurance
355.	06/23/09	Elwood Syverson	Equitrust Marketing Services, LLC
356.	06/23/09	Roland X Szukhent	Ameritas Financial Services Inc
357.	06/23/09	Christopher Taggart	Taggart Company
358.	06/29/09	Charles Taylor	--
359.	06/25/09	Hugh Taylor	Taylor Insnm
360.	06/23/09	Cynthia M Thixton	New York Life Insurance Company
361.	06/25/09	C Clyde Thomas II	Northwestern Mutual Finance Network (NMFN)
362.	06/24/09	Heath Threadgill	--
363.	06/29/09	Chris Tilley	--

NOTICE 09-25**Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations****INDIVIDUAL COMMENT LETTERS**

	Date Letter Received	Sender	Company Name
364.	06/23/09	Darlene Tucker	Modern Woodmen Fraternal Financial
365.	06/23/09	John S. Tuttle	Northwestern Mutual Financial Network
366.	06/23/09	Ken Tynes	SFBCIC
367.	06/23/09	Bruce Udell	Udell Associates
368.	06/23/09	Bruce Umeda	Pacific Guardian
369.	06/23/09	Susan Unger	FinSvcS
370.	06/23/09	Mary Ann Wagner	Catholic Knights
371.	06/25/09	Carl Walbert	--
372.	06/25/09	Peirce Ward	Thompson Financial Group
373.	06/23/09	Wayne L. Warren	New York Life Insurance Co.
374.	06/23/09	Michael J. Weaver	Ackley Financial Group
375.	06/24/09	Ted Weaver	--
376.	06/26/09	Walker L. Wellford, III	MassMutual Financial Group
377.	06/23/09	C. David Welsheimer	Buckeye Planning Concepts, Inc.
378.	06/23/09	R. David Wentz	Tax Favored Benefits, Inc.
379.	06/23/09	Buster West	Hickory Tech
380.	06/23/09	Mike West	The Forker Company
381.	06/25/09	Ralph P. White	White & Associates
382.	06/29/09	Jeffrey B Williams	Northwestern Mutual Investment Services
383.	06/23/09	Rita Wishard	Wishard Insurance
384.	06/23/09	Rory Wold	--
385.	06/23/09	Dennis C. Wong	NAIFA Members
386.	06/30/09	Pamela Yellen	--
387.	07/01/09	Gary Young	The Financial Group
388.	06/25/09	Michael J. Youso	FBFS
389.	06/23/09	Paul Zietlow	--

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Text of Proposed New FINRA Rules

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2000. DUTIES AND CONFLICTS

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2090. Know Your Customer

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.

• • • Supplementary Material: -----

.01 Essential Facts. For purposes of this Rule, facts “essential” to “knowing the customer” are those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.

2100. TRANSACTIONS WITH CUSTOMERS

2110. Recommendations

2111. Suitability

(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 information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to,

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 customer may disclose to the member or associated person in connection with such recommendation.

(b) A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in NASD Rule 3110(c)(4), if (1) the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (2) the institutional customer affirmatively indicates that it is 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 adviser or a bank trust department, these factors shall be applied to the agent.

• • • Supplementary Material: -----

.01 General Principles. Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA's rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Recommended Strategies. The phrase "investment strategy involving a security or securities" used in this Rule is to be interpreted broadly. However, the following communications are excluded from the coverage of Rule 2111 as long as they do not include

(standing alone or in combination with other communications) a recommendation of a particular security or securities:

(a) General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimating future retirement income needs, and (v) assessment of a customer's investment profile;

(b) Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;

(c) Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by NASD IM-2210-6; and

(d) Interactive investment materials that incorporate the above.

.03 Components of Suitability Obligations. Rule 2111 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

(a) The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors. 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.

(b) The customer-specific obligation requires that a member or associated person have reasonable grounds to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a).

(c) 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 investment 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.

.04 Customer's 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.

.05 Institutional Investor. With respect to having to indicate affirmatively that it is exercising independent judgment in evaluating the member's or associated person's recommendations, an institutional customer may indicate that it is exercising independent judgment on a trade-by-trade basis, on an asset-class-by-asset-class basis, or in terms of all potential transactions for its account.

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Text of NASD, Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted In Their Entirety from the Transitional Rulebook

NASD Rules

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[2310. Recommendations to Customers (Suitability)]

Entire text deleted.

[IM-2310-1. Possible Application of SEC Rules 15g-1 through 15g-9]

Entire text deleted.

[IM-2310-2. Fair Dealing with Customers]

Entire text deleted.

[IM-2310-3. Suitability Obligations to Institutional Customers]

Entire text deleted.

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Incorporated NYSE Rules

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[Rule 405. Diligence as to Accounts]

Entire text deleted.

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NYSE RULE INTERPRETATION

[Rule 405 Diligence as to Accounts]

Entire text deleted.

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