

Tuesday, June 16, 2009

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

FINRA
Notice to Members

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

Dear Ms. Asquith:

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

- I Oppose FINRA's Effort to Expand Suitability Requirements to Non-Security Investment Products or Services - As a financial advisor, I vigorously oppose efforts to expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, contradictory regulatory requirements that do not advance the goal of investor protection. As a result, I oppose FINRA's suggestion that it expand the suitability obligations to all recommendations of investment products, services, and strategies made in connection with a broker-dealer's business, regardless of whether the recommendations involve securities.
- I Oppose the Expansion of Suitability Criteria to Include Portfolio Level Concerns - A client's investment time horizon, liquidity needs, and risk tolerance are important considerations. However, I believe they are best judged at the portfolio level. The Proposed Rule would instead require each securities transaction to be suitable based upon these additional criteria. I believe this would have unfortunate unintended consequences for my clients who may have several competing investment objectives that are best met by a fully diversified portfolio made up of securities of varying degrees of liquidity, risk, and anticipated holding periods.
- I Oppose the Expansion of the Suitability Review to Information Known by My Broker-Dealer - I operate my own small business. From time-to-time, I compete with other financial advisors who are registered with the same broker-dealer. As a result, it is quite possible for my broker-dealer's records to include information about a client that was collected by one financial advisor, but unknown to me at the time of my recommendation. The Proposed Rule would require independent broker-dealers to engage in a search through all of their internal client databases, files, and documentation along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. I believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection. I, therefore, oppose this aspect of the Proposed Rule.
- I Believe the Proposed Rule is Offered Prematurely - FINRA is currently engaged in the process of integrating the existing NASD and NYSE rules into a consolidated rulebook. This is an important project with wide reaching implications. It is, however, only one small part of the current debate surrounding the financial services regulatory structure. An important issue in this debate is the standard of care owed by a financial advisor to a client. The resolution of this debate has the potential to make the Proposed Rule a

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

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

Sincerely,

Thomas Diehl
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