



National Planning
HOLDINGS, INC.™

VIA ELECTRONIC MAIL

June 29, 2009

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

Re: Comment Letter – FINRA Regulatory Notice 09-25, Proposed FINRA Rules 2111 and 2090, Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

National Planning Holdings, Inc. (“NPH”) offers this comment letter on behalf of its subsidiary, Financial Industry Regulatory Authority (FINRA) member firms:

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| ▪ INVEST Financial Corporation (IFC) | CRD – 12984 |
| ▪ Investment Centers of America, Inc. (ICA) | CRD – 16443 |
| ▪ National Planning Corporation (NPC) | CRD – 29604 |
| ▪ SII Investments, Inc. (SII) | CRD – 2225 |

The four NPH Broker-Dealers have over 3,300 Registered Representatives offering investment services to clients in all domestic jurisdictions. We appreciate the opportunity to submit comments on the issues raised in Regulatory Notice 09-25 regarding the proposal to create FINRA Rules 2111 and 2090 governing suitability and know-your-customer obligations. The thoughts and comments provided in this letter have been reviewed by members of senior staff of our firms, including the respective Presidents and Chief Compliance Officers, and represent the collective view of the NPH Broker-Dealers.

Proposed Rule 2111 - Suitability:

Rule 2111(a)

There are three areas being proposed within Rule 2111 section (a) that cause concern, which we have underlined for further comment as follows:

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the facts known by the member or associated person or disclosed by the customer in response to the member's or associated person's reasonable efforts to obtain information concerning the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the member or associated person considers to be reasonable in making recommendations.

Comments:

- Existing NASD Rule 2310 focuses solely on the recommendation of the purchase, sale, or exchange of any security. By expanding this expectation to include “investment strategies”, the scope of the rule is significantly broadened and is largely undefined. There are a number of currently activities that may fall within the suitability review requirement, but further clarification would be required. For instance, financial plans derived by investment advisers or their investment advisory representatives, could be deemed “investment strategies” if provided by individuals registered with a member firm. We believe that such plans provided within an investment advisory context should be specifically excluded under the proposal. Other activities that may fall within the scope of the rule may include dollar-cost-average investing, reallocation elections under variable contracts, or general advertising or marketing materials discussing investment options if subsequently employed by an investor. Ultimately, the term “investment strategy” is very general in nature, and would require further clarification by FINRA.

We request that FINRA not include the term “investment strategies” under proposed Rule 2111. Alternatively, we request that FINRA consider this concept in conjunction with proposed FINRA Rule 3110 – Supervision, which was issued for comment May 2008, to allow a holistic review of the suitability standard coupled with the supervisory requirements that would result from the new provision.

- Generally, when collecting suitability information, the client is asked to complete various forms designed to collect pertinent information regarding their personal information, financial status, goals, objectives, and so on. The additional requirement “known by the member or associated person” creates an opened-ended process that will cause challenges for member firms. There may be items known by representatives, who have intimate knowledge of client through a family relationship or friendship, that the representative does not believe are relevant to the investment decision or that clients wish not be captured in a system or shared with a broader audience¹. Just because an associated person or member firm may know certain information, does not mean the client gives their permission for that information to be captured or disclosed on suitability forms within their file. Representatives may develop very close relationships with their clients, which may make them privy to a variety of information which is personal in nature, and should not be used without client consent. Ultimately, the client should reserve the right to determine the information maintained by the firm related to their accounts and transactions. The requirement to base decisions on this information also create operational difficulties for firms, that will be required to develop systems to capture information through use of free form text and standards to judge the relevancy of information that has previously not been captured or communicated to principals. While “free form text” can be used to have representatives communicate this information to principals, the consistency of this information and relevancy will be subject to broad interpretation.
- In regard to the suitable information that an associated person should make reasonable efforts to collect, we suggest FINRA maintain a standard approach to the terminology used in relation to this element of the rule, and any other rules with similar requirements. As an example, the text below is an excerpt from NASD Rule 2821 in relation to the same issue, yet the text varies slightly. In particular proposed Rule 2111 uses the term “other investments”, while Rule 2821 states “existing assets (including investment and life insurance holdings)”. We feel the term “other investments” is overly broad and should be further refined to focus on investment and life insurance holdings, further aligning the text of this rule with other existing rules such as Rule 2821.

¹ Examples may include a diagnosed illness, pending divorce or separation, pending legal action, or similar item that a representative may have knowledge of that the client specifically does not want disclosed to broader group.

(b)(2) a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

Rule 2111 Supplementary Material .02 – Components of Suitability Obligations

Comments:

As outlined in Supplementary Material .02 of proposed Rule 2111 there are three main suitability obligations: reasonable-basis suitability, customer-specific suitability and quantitative suitability. The description of the reasonable-basis and customer-specific suitability obligations are clear and are generally expected under existing Rule NASD 2310.

The quantitative suitability obligation however, states the following:

Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

Our concern in relation to this element of Supplementary Material .02 is that it appears to be suggesting that prior to approving a transaction, the designated principal or member firm shall assess the individual transaction in relation to transactions that may have come prior, illustrating various patterns or trending which would deem the proposed transaction unsuitable. While ideal, we feel this requirement may be burdensome to member firms that may be challenged to provide this type of trending analysis upfront prior to the transaction. We suggest FINRA clarify its expectations related to the documentation standards for this type of suitability determination and to clarify when individually suitable transactions may not be suitable in the aggregate.

Rule 2111 Supplementary Material .03 – Customers' Financial Ability

Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities if such recommendation is inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

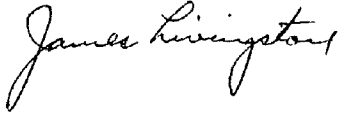
Comments:

- We feel the term "reasonable expectation" should be more clearly defined. We do not feel it is realistic for an associated person to know or inquire as to the customer's financial status prior to each recommendation. Generally, the associated person inquires as to the customer's financial situation at the time of account opening, every three years thereafter as required under SEC Rule 17a-4, and any time the customer provides a material update. We believe the onus should fall to the customer to ensure the associated person is made aware of the customer's financial situation and any material changes to that situation should they occur.

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In summary, the NPH Broker-Dealers reiterate their support of FINRA's rule consolidation process. We have great appreciation for the time and efforts involved in such an enormous undertaking and believe that member input into the process is critically important. However, we respectfully request that the FINRA consider the issues we have outlined related to Regulatory Notice 09-25 and proposed FINRA Rules 2111 and 2090, which may have unintended consequences to the member firm community.

Sincerely,

A handwritten signature in cursive script that reads "James Livingston". The signature is written in black ink and is positioned above the typed name and title.

James Livingston
President/Chief Executive Officer
National Planning Holdings, Inc.