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Sent: Monday, June 29, 2009 3:59 PM
To: Comments, Public
Cc: Bretthorst, Ken; Lanigan, James; Garrison, Phil
Subject: Comments in response to Regulatory Notice 09-25

COMMENTS ON PROPOSED SUITABILITY and KNOW YOUR CUSTOMER RULES

2111(b)(1) "if the institutional customer affirmatively indicates that it is willing to forego the protection of customer-specific obligation of the suitability rule"

This provision is useless since the institutional customer has no incentive to forego the protection. In addition, most institutional customers are unwilling to provide disclosure of investment portfolios, tax status and other information for competitive reasons. The proposed rule does not provide guidance on how a firm can make a suitability determination if the customer declines to provide the necessary information. A firm is placed in a position where it is impossible to comply with Rule 2111.

2111(b)(2) "the member or associated person has a reasonable basis to believe that the institutional customer is (A) capable of evaluating investment risks independently... and (B) exercising independent judgment in evaluating the member's or associated person's recommendations."

This provision is a challenge for the member and associated person to document compliance. How does a member firm document the institutional investor's capability? Is it based on education achievement or years of investment experience? Do we accept the statements of the customer's representative? If the institutional account has several persons buying for the account, must the capability and independence be documented for each person?

2090 "use due diligence, in regard to the opening and maintenance of every account..."

When maintaining the essential facts concerning the customer, must the dealer as the customer to confirm the "essential facts" at each transaction. It would be helpful to provide time frames, such as annually, every three years etc. It will be particularly difficult to document the due diligence actions on institutional customers who make frequent trades.

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