

From: Mihal, Shawn [SMihal@gaadvisors.com]
Sent: Friday, June 26, 2009 2:35 PM
To: Comments, Public
Subject: Regulatory Notice 09-25: Proposed Rules 2111 Suitability and 2090 Know Your Customer

Sent Via Email: pubcom@finra.org

June 26, 2009

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

Re: Regulatory Notice 09-25: Suitability and "Know Your Customer"

Dear Ms. Asquith:

We are submitting this letter in response to a request for comments by the Financial Industry Regulatory Authority ("FINRA") published in Regulatory Notice 09-25 titled *Suitability and "Know Your Customer"*. Great American Advisors[®], Inc. ("GAA") appreciates this opportunity to respond to FINRA's request for comments. While GAA understands and supports FINRA's efforts to work diligently toward the creation of a consolidated rulebook addressing rules employed by both the National Association of Securities Dealers NASD and New York Stock Exchange NYSE, such consolidation, in certain cases, creates substantial hardships respective to the member firms obligations prescribed by Proposed Rules 2111 Suitability and 2090 Know Your Customer (collectively referred to herein as the "Proposed Rules").

A review of the Proposed Rules indicates that many well thought provisions from the existing rules have been transitioned and amended to provide investor protection in an efficient and logical approach. GAA commends FINRA and supports the consolidation of multiple rules and notices into one uniform rule and the clear exemption for institutional customers, providing such exemption extends to group retirement plans. GAA also supports material items included in the Proposed Rules designed to promote fair dealings with customers and prohibit the recommendation of security(ies) purchases beyond the customers financial ability.

GAA, however, is concerned with other material items included in the Proposed Rules. Consequently, GAA opposes several of the provisions instituted in the Proposed Rules and FINRA's suggestion to expand suitability obligations as discussed herein.

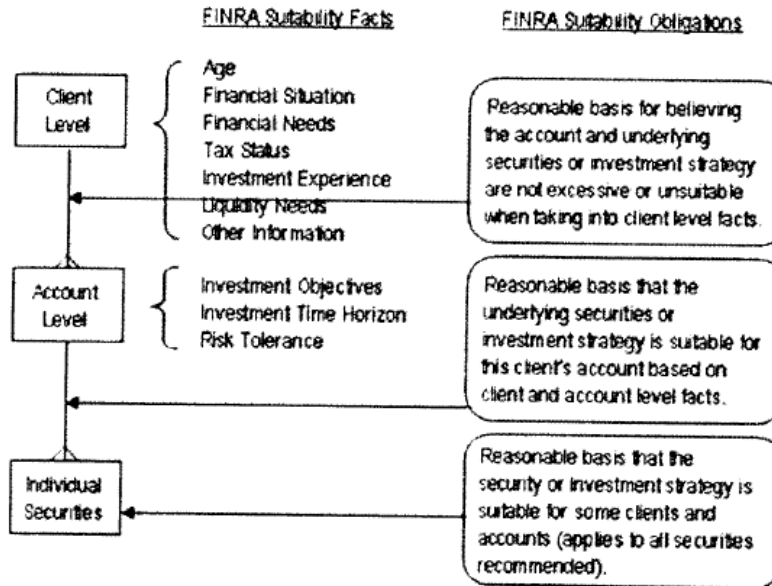
GAA is concerned with the implications of the Proposed Rules relevant to the ongoing debate about the appropriate standard of care owed by a financial advisor to a client. It is unclear at this point how these issues will be resolved by Congress and other policymakers. However, such resolution has the potential to fundamentally impact the application of the Proposed Rules. Subsequently, member firms and their associated persons may incur substantial costs to comply with the Proposed Rules by creating new written supervisory procedures, amending, creating, and printing new forms and applications, and

reprogramming databases or developing new electronic systems designed to facilitate the processing of securities transactions consistent with the Proposed Rules. As a result, we urge FINRA to delay this Rule Proposal while we await clarity on the broader standard of care issue. Such an approach will help reduce the cost and confusion inherent in making two significant and fundamental changes to this foundational principle.

GAA strongly opposes FINRA's suggestion to expand suitability obligations to all recommendations of investment products, services, and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities. Such proposal would materially expand FINRA's reach to include matters over which it does not have jurisdiction. The sale of insurance products, investment advisory services, and other products and services are already closely regulated by state and federal authorities. Subsequently, FINRA's suggestion that its suitability rule should apply to these activities would result in redundant, conflicting, and contradictory regulatory requirements that do not advance the goal of investor protection. GAA's Representatives often operate outside business activities for the sale of insurance and other non-securities products. These small businesses entrepreneurs would find the suggested expansion of suitability obligations to be a significant financial hardship.

GAA has some concern that the Proposed Rule, in its current form, may lack clarity and allow for inconsistent interpretation. Subsequently, an individual may interpret the evaluation of suitability facts are applicable only at the transaction or individual security level. However, in many cases, that the evaluation of suitability facts must be considered and judged based on all recommendations included in the portfolio of securities purchased. If it is indeed FINRA's intention to evaluate suitability facts only at the transaction or individual security level, then GAA feels that this rule may result in certain unintended consequences for investors who may have several valid, but competing investment objectives that are best met by a fully diversified portfolio or the establishment of different account types made up of securities of varying degrees of liquidity, risk, and anticipated holding periods. A client's investment time horizon, liquidity needs, and risk tolerance are important considerations; however, we believe that circumstances exist when such factors and considerations are best judged at the portfolio or account level.

Perhaps an illustration of how we view the application of these Proposed Rules and how suitability facts and obligations would be gathered, recorded and evaluated would better illustrate our concern.



Should the Proposed Rule be interpreted such that suitability facts are applied at the security or transaction level, essentially the lowest common denominator, then the basic investment principals of diversification would no longer work, a mass failure of member firms monitoring and evaluation tools would occur which may lead to significant confusion by Registered Principals trained to approve the opening of new accounts.

GAA is concerned with the expansion of the suitability review to include information known by the broker/dealer. Like other independent contractor broker/dealers, GAA's financial advisors operate their own small businesses in communities throughout the country. In certain circumstances they can compete with other financial advisors who may be registered with the same broker/dealer. As a result, it is possible for an independent broker/dealer's records to include information about a client that was collected by one financial advisor, but unknown to the client's current financial advisor. The Proposed Rule would require independent broker/dealers to engage in a search through all of their internal client records along with the records of their affiliated financial advisors to determine if there is other relevant suitability information "known by" the firm. We believe this requirement is simply unworkable and unlikely to result in a significant improvement in investor protection.

We are pleased to have the opportunity to provide these comments and hope that they can assist FINRA in developing rules that are fair and appropriate for all members firms. Should you have any questions, please feel free to contact me at (513) 412-1531 or via email at smihal@gaadvisors.com.

Shawn M. Mihal
 Chief Compliance Officer
 Great American Advisors, Inc.
 Member FINRA and SIPC
 An SEC Registered Investment Advisor
 (800) 216-3354 Extension 11531
 Facsimile: (513) 412-5142
 Email: smihal@gaadvisors.com

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