

ERROLD F. MOODY JR.
PhD, MSFP, LLB, MBA, BSCE
Life and Disability Insurance Analyst 0626414
2410 W Ave 135
San Leandro, CA 94577
Phone & Fax 510 352-4127
San Leandro/Napa Marina Offices 510 459-7797

Author, *No Nonsense Finance*, McGraw Hill
Master of Science in Financial Planning
Registered Investment Adviser
B-1 General Contractor
Real Estate Broker
WWW.EFMoody.com
EFM@EFMoody.com

June 27, 2009

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

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

I have the unique background of teaching almost all the securities licensing courses in the past (4, 6, 7, 86, 22, 24, 27, 63, etc) as well as acting as an securities arbitrator, expert witness and more. A resume is attached for validation. Beyond that I am almost assuredly the only one who replies who definitively defines suitability on a real world application, not just with words. .

I have also approached the NASD/FINRA for over 15 years in regards to investor protection via broker knowledge. Without such fundamental training, suitability cannot be determined.

I note that the material states, "NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405,4 addressing know-your-customer obligations, are critical to protecting investors."

While an acceptable plaudit, it has no meaning. None of the brokers via a series 7 (the most common broker license) have ever been taught the fundamentals of investing. I have independently taught that such fundamentals include alpha, beta, standard deviation, diversification (by the numbers), correlation, risk of loss and more. I estimate that over 85% of RIAs are equally dumbstruck by even the most rudimentary elements of risk and reward. In such regard, how is one to "know thy customer???" The agent can get all types of info from a naive and unsophisticated investor and then what?- protect them from what? Unknowledgeable competitor advisers? Well, you won't have anyone left.

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.

That goes without saying. Effectively all the investment plans, retirement analyses and certainly any variable life and annuity illustrations I have seen to date, regardless of the size of the B/D, are deceptive at best and fraudulent at worst. The prime example involves the use of the term and numbers of standard deviation that is used to supposedly indicate something reflective of what risk is (wrong). Almost all the computerized plans are incorrect and deceptive. AIG's index life policy is backtested to use a 17.53% annualized return each year for the next 50 years. FINRA will now demand that indexed products be suitable? And no broker is trained on the use of a financial calculator? Well this will be interesting.

As far as I am concerned, such activity, which invariably includes any type of retirement income plan, budgeting and so on, has always fallen under the purview of suitability since the selection for the investments to be used requires scrutiny of not only how it works for the intended purpose, but whether they will work at all. So why not expand the suitability limits? It will make my job easier overall in showing the limited to nil competence of the brokerage community. But you need to realize that it will further denigrate the status of FINRA for refusing to instruct licensees on the fundamentals.

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).

The words are nice but investment experience is a wasted request when put into the real world. As stated to Shapiro years ago, consumers may have bought various investments over the years but generally without any true insight to what was going on or *what they should have done*. I repeat the fact that there is literally no consumer who knows what diversification is by the numbers. If you cannot determine diversification you cannot determine risk. If you cannot determine risk, you cannot even remotely identify suitability. Of course I took liberty with the comments about the knowledge of diversification by consumers but not by more than 0.0005%. That said, the understanding to risk is nil.

Investment experience CANNOT be used as a guide to what they should have done over the same period. To have uneducated brokers use this as a rationale or crutch is a breach of duty.

It is within this same commentary that 'risk tolerance' is a joke. I have NEVER seen any type of investment plan that has defined risk properly. A recent major B/D firm- as with effectively all others- has no clue to risk tolerance and to suggest that they can use they can transfer the risk tolerance to an individual who cannot properly spell it is ludicrous.

Further: 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 how do you propose to determine such capability?

Because the “FINRA Institute at Wharton provides an understanding of the foundation, theory and practical application of securities laws and regulation. Participants learn from Wharton faculty, senior regulators and industry practitioners, and earn the distinct designation of Certified Regulatory and Compliance Professional (CRCP) upon successful completion of the program”?

And the point is what? There is no practical application of use of product. There is nothing on a financial calculator. After all, you would have all know about the fraud of a 17.53% projection and would have curtailed it, right??

No matter, Professors Herring and Diebold of *Wharton* noted this recently when asked if risk can be measured accurately: Dick Herring: “I think the last year shows that we can't, that there are lots of things we can't quantify very successfully and that we became overconfident in the things we *could* quantify. We've made great strides in risk analysis, risk measurement, and aggregating risk. But we've tended to focus most of those efforts on things that are relatively easy to manage. And even some of those relations broke down. We simply didn't have enough data. Our techniques were not good enough. We weren't using enough forward information and, unfortunately, this crisis has blame that can be shared across the entire spectrum of participants, from regulators to participants in securitizations and even to risk managers themselves.

Francis Diebold: I think that's right. That reminds me of our project on the known, the unknown, and the unknowable that we've done here at Wharton at the Financial Institutions Center in conjunction with the Sloan Foundation. What we focused on and really came to realize more intensely was that there's a whole spectrum of risks ranging from market risk to credit risk to operational risk to legal and reputational risk and things beyond that. Some are comparatively easy to model, which isn't to say they are easy, but they're comparatively easy. Others are really challenging and basically we're not good at all.”

But the *fundamentals of risk analysis* can be taught. However not to brokers since one needs a financial calculator. Such capability has never been required for licensees.

Supposedly, ‘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’.

I will agree that the words are acceptable. But the whole emphasis on know the customer is a fraud due to the continuation of a severely bankrupt knowledge base to any licensee from the time I started instruction in the 1980s to now. The position taken in the mid 90s by NASD that increased knowledge would slow sales and would never be allowed remains. Shapiro’s statements that FINRA is a procedural entity and not a substantive one (2004) continues to reflect the dearth of ethical responsibility to consumers. Brokers do not even know what diversification is. .

Finra has provided nice words. The theory is valid. But it cannot back them up with any industry elements since it refuses to even expose licensees to any of the fundamentals of investing. Add any credentials from Wharton or Harvard or whatever. Compliance over entities that are effectively clueless to the proper use of product is absurd. Unless and until the necessary knowledge is mandated, changes in a rule like this per se will provide little, if any, benefits to the consumer.

Why bother??

Errol F Moody Jr

Errold F. Moody Jr.
2410 W Ave 135
San Leandro, CA 94577
Phone and Fax 510 352-4127
Marina Offices 510 357-1554

SUMMARY OF QUALIFICATIONS

Over 37 years of hands-on experience as a financial and real estate consultant to various title companies, corporations, CPA's, attorneys, partnerships, credit unions, non-profit organizations and individuals. For the last 25 years, major focus has been in individual fee financial planning. Expertise has covered investment analysis and monitoring, estate and pension planning, living trusts, charitable gifting, sales and management (stocks, bonds, partnerships, insurance, REIT's and mutual funds), retirement planning, life and disability insurance review, security arbitrations, taxation and national and international economic analysis. Offer expert testimony on brokerage and financial issues. Have written and taught extensively in the field.

Authored the largest (4,000+ pages and 1,650+ links) and most comprehensive independent financial planning site on the Internet (EFMoody.com) designed for consumer education and knowledge.

Author of No Nonsense Finance by McGraw Hill, (2004)

Author of "Practical Investment Theory and Application"- the only investment continuing education course ever approved by the California State Bar (2008)

Author of "Practical Life Insurance and Annuities Analysis and Application"- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Author of "ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity", Marquette University Law School (2009)

PROFESSIONAL EXPERIENCE

1981- 1997: Dearborn Financial Institute & Securities Training Corporation. Instructor for the Series 6 (mutual funds, variable life and annuities); Series 7 exam (stocks, bonds, options, economics, security regulations); Series 22 (limited partnerships, personal and corporate taxation); Series 24 (General Securities Principal); Series 26 (Mutual Fund Principal); Series 63 (multi state license); Series 52 (Municipal Securities); Series 62 (Corporate securities) and insurance, special education programs and securities continuing education courses.

1977- 1999: Professor/instructor for University of California at Berkeley and Irvine, University of San Francisco, Orange Coast, Santa Ana, Coastline and Scottsdale Community Colleges. Includes MBA course in Real Estate Finance, courses for the UC certificate programs "Professional Designation in Financial Planning" and "Professional Designation in Investment Real Estate" and specialized seminars.

1987- 1998: Arbitrator with the National Association of Securities Dealers and Pacific Stock Exchange

1995- 2004: A.D. Banker, Instructor in Insurance for continuing education courses in Estate Planning, Managed Health Care, Annuities, Long Term Care, Qualified Retirement Plans, Government Programs and Medicare Supplements, Disability Income, Ethics, Principles of Contract Law, Principles of Agency Law, Taxation of Life

Insurance and Annuities, and Financial Products for Financial Planning.

DEGREES, LICENSES AND DESIGNATIONS

BSCE, LLB, MBA, PhD (Real Estate)

Masters of Science in Financial Planning (Estate Planning Major) Life and Disability Insurance Analyst 0626414 (One of about 30 in California) Certified Financial Planner Registered Investment Adviser (California) California Real Estate Broker California B-1 General Contractor Series 7, 24, 27 and 63 Securities Licenses- inactivated Series 65 Securities License (Multi State Adviser) California Life and Disability License 0626414

ARTICLES and PUBLICATIONS

Authored courses accepted for securities continuing education in financial planning, estate planning, taxation and tax planning, investments and suitability, ethics, retirement planning and insurance and annuities. (1996)

Author of ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity, Marquette University Law School, 2009

Authored the only courses on investments accepted for continuing education by the State Bar of California (1995 and 2008)

"Practical Investment Theory and Application"

Author of "Practical Life Insurance and Annuities Analysis and Application"- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Authored two courses accepted for 4 and 16 hours of continuing education for Certified Public Accountants by the California Board of Accountancy. Previous course accepted for CPA credit in 10 states.

"Advanced Business Continuation and Estate Planning"

"Advanced Financial Planning and Investing"

Authored two real estate courses granting 9 and 21 hours of continuing education by the California Department of Real Estate. Material was used in courses at several colleges including UC Irvine as part of Certificate program.

"Current Concepts of Real Estate and Investing"

"Major Concepts of Real Estate and Investing"

Authored additional courses in Long Term Health Care, College Funding, Business Continuation, Investments, Trustee Selection and Charitable Gifting.

Authored "Arbitrators Guide to Securities" for the Center for Investor Protection

Above material was compiled and offered as text for UC Certificate course in Survey in Financial Planning.

Author a monthly investment and financial planning newsletter- Moody's Review- since 1987.

Author the largest (4,000+ pages and 1,650+ links) and most comprehensive financial planning site on the Internet (www.efmoody.com) designed for consumer education and knowledge. The Web site is noted as a Top Retirement Site by Forbes, Business Week, USA Today, and One of the Web's Most Useful Money Sites by Bottom Line. Has also been linked by Ernst and Young for Financial Planning, Department of Aging for Long Term Care and other sites around the Internet for Real Estate, Retirement, Investments, Long Term Care, Estate Planning, etc. and has been selected by AOL and Netscape as one of their top sites for stocks and financial planning advice, among others.

Have been published/quoted in numerous business magazines (San Francisco Chronicle, California Broker, Investment Adviser, Smart Money, Wall Street Journal, New York Times, Money Magazine, National Underwriter, Consumer Reports, Mutual Funds Magazine, Life Insurance Selling, Parenting Magazine, Realtor Digest, Corporate Finance, Numerous national newspapers, Registered Investment Adviser, Ticker magazine, Orange County Register, etc.) and have been interviewed frequently on local and national radio and TV.

SEMINARS

Have conducted seminars and classes on most financial and real estate issues to Chambers of Commerce, Corporations, Teachers, Union Officials, Securities and Insurance firms, Universities, American Association of Individual Investors, National Association of Personal Financial Advisers, Senior Groups, etc. to groups to 200.

EXPERT WITNESS CASES

During 2005, the following reports were prepared for court or arbitration process.

1. Defendant for libel regarding Viatical settlements. Suit dismissed
2. Plaintiff against American Express and CFP regarding fraud and breach of fiduciary duty. Settled for plaintiff
3. Defendant for sentencing on a Federal Case regarding international bond trading scheme. Reduced sentence.
4. Defendant in alleged illegal trading. Suit dismissed
5. Plaintiff for trust against "bankrupt" annuitant. Settled for plaintiff
6. Continuing effort for plaintiff against CFP and CFP Board of Standards for breach of duty on life insurance sales. \$977,000 current proceeds.

2006:

1. Report for defendant on breach of fiduciary duty by a charity.
2. Pro bono filing against CFP with the Florida Department of Financial Services. Department is doing a full investigation at present
3. Report against several insurance companies in New York for breach of duty against fire department personnel regarding defined benefit programs. Ongoing
4. Report against major insurance company regarding retiree sold index annuity instead of taking pension. Ongoing
5. Report for insurance company defending complaint regarding major wealth management firm in New York. Settled
6. Defense for defendant on elderly abuse. Reduced sentence.
7. Plaintiff for beneficiary of 100 year old mother regarding breach of fiduciary duty, negligence, churning, etc.

2007:

1. Report for lawsuit regarding partner in termination of Financial Planning partnership
2. Arbitration on losses sustained by elderly client
3. Report for defense on fraudulent conveyance of real estate properties
4. Analysis for Life Settlement commission dispute.
5. Plaintiff for elderly fraud in Tennessee.
6. Continuing effort against Florida CFP has now initiated formal investigation..
7. Case involving participating insurance contracts written in the late 1940s

2008 Cases

1. Defense for telephone solicitor of debit cards.
2. Report for divorce on cost of long term care for elderly parent
3. Report against CFP breaching fiduciary duty to clients
4. Report on employee firing by major B/D
5. Consultant for major insurance firm regarding fraudulent/ irresponsible sales.

2009 Cases

1. Report for losses sustained in equities retirement plan.

2. Real Estate fraud