

**From:** Alin Rosca [arosca@jscltd.com]  
**Sent:** Monday, June 29, 2009 3:47 PM  
**To:** Comments, Public  
**Cc:** 'John Chapman'  
**Subject:** Comments Regarding Proposed FINRA Rule 2111

Dear Sirs:

I am writing to comment on FINRA's proposed Rule 2111, governing suitability and the broker-dealers' duty to know their customers.

Firstly, one of the issues on which FINRA is seeking comment is whether the suitability obligations should be expanded to "all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether recommendations involve securities." The suitability obligations should be expanded to cover such recommendations.

The financial industry's long-term trend has been to expand the range of services offered to customers. Many broker-dealers have moved on from the more traditional function of merely supplying stock recommendations to customers. They have adopted a more comprehensive business model that focuses on providing "financial planning" services. Such services address a wide variety of investment-related needs a customer may have.

The regulatory framework should keep up the pace with such industry developments. Industry regulators should ensure that broker-dealers follow the fair dealing rules with regard to all investment-related services they offer to customers. Retaining a narrow regulatory framework, which covers a decreasing part of broker-dealers' business, may gradually make such regulatory framework irrelevant and easy to avoid.

Secondly, a certain part of proposed Rule 2111(a) appears to be somewhat ambiguous and could result in an exceedingly narrow interpretation of a broker-dealer's "suitability" duties. The proposed rule states that

[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 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 ....

Proposed Rule 2111(a), Notice to Members 09-25 (May, 2009) (*emphasis supplied*).

Under a narrow reading, the member's "reasonable efforts" seem to be limited to merely asking the customer to respond to the member's request for certain information. Such efforts would be far from sufficient in the case of investors with reduced physical or mental capacity, such as many elderly investors.

Elderly investors often deal with broker-dealers through intermediaries such as relatives, friends, other professionals including accountants, investment advisers, or attorneys. The reasons for such arrangements often include the elderly customer's diminished (or absent) physical or mental capacity, long stays in nursing or medical care facilities, and so on. In such cases, merely asking the elderly customer to supply information deemed relevant is far from adequate.

Reasonable efforts should include obtaining relevant information from third-party professionals who are involved in assisting or managing the elderly customer's financial affairs. The text of Rule 2111(a) should eliminate the suggestion that a member's "suitability" duties are circumscribed to merely communicating with the customer to obtain relevant information.

Thank you for allowing our law firm to submit comments to this proposed rule.

Yours truly,

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