

June 29, 2009

Via E-mail (pubcom@finra.org)

Ms. 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

Dear Ms. Asquith:

The Regulatory Notice referenced above requests comments on whether FINRA 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." National Futures Association (NFA) appreciates the opportunity to comment on this issue.

As a registered futures association under the Commodity Exchange Act (CEA) and a self-regulatory organization for the futures industry, NFA regulates the more than 50,000 registered associated persons (APs) who solicit futures or options orders or accounts for transactions on regulated futures exchanges. Customer protection is our number one priority, and our rules governing AP sales practices play a crucial role in achieving that goal.

In 1985, NFA's Board of Directors adopted a Know-Your-Customer rule (NFA Compliance Rule 2-30) that provides protections comparable to FINRA's suitability rule but that are tailored to the unique requirements of the futures industry. In the securities industry, investors can purchase a wide variety of securities with varying degrees of risk potential that serve very different investment objectives. In contrast, all futures contracts are highly volatile and risky instruments. It makes no sense to say that a customer is suitable to invest in heating oil futures but not in Treasury note futures. Instead, the determination has to be made on a customer by customer basis rather than a contract by contract or transaction by transaction basis.

NFA's Know Your Customer rule requires each Member to obtain extensive information about each customer's experience, income, net worth and age before opening an account. Based on that information, the Member has to make a



judgment as to the amount of disclosure that is adequate and must decide whether the customer requires additional risk disclosures beyond the standard disclosures required by CFTC regulations. In some cases, the only adequate risk disclosure that the Member can provide is that futures trading is too risky for that customer. This is true even if the Member makes no recommendations whatsoever to the customer.

Additionally, another important protection for futures investors is NFA Compliance Rule 2-29, which governs both oral and written communications. Among other provisions, it prohibits misleading or high-pressure communications. In our experience, most customers who invest in inappropriate products do so either because they do not take advice or recommendations from anyone—in which case FINRA's suitability rule would not apply—or because they were misled about the risks or high-pressured into investing. Compliance Rule 2-29 prohibits these later practices and has been an effective means of dealing with rogue brokers who convince people to invest in the futures markets when it is not appropriate for them.

NFA has also been in the forefront of cracking down on rogue brokers through its enhanced supervision rule. Since 1993, Compliance Rule 2-9(b) has required certain firms to tape record all of their conversations with customers. This requirement has proven to be an effective deterrent against fraudulent behavior and high-pressure sales as well as a powerful investigative tool in the handful of cases where it does not have the desired deterrent effect. Not surprisingly, there has been a greater than 60% drop in the number of problem APs since the rule became effective. NASD was no doubt aware of NFA's successful track record when it adopted its own rule several years later.

The numbers show that NFA's sales practice regulation has been highly effective. Since 1985, trading volume on U.S. futures markets has increased by almost 1700%, while customer complaints have actually dropped approximately 66% (as measured by the total number of reparation and arbitration proceedings filed annually). Obviously, NFA's Know-Your-Customer rule is only part of that picture, with our other sales practice rules and enforcement efforts playing an equally significant role. Still, the bottom line is quite clear: NFA's existing regulatory program protects customers quite well, and a suitability rule triggered by a recommendation and based upon product type is not a workable framework for the futures industry and would provide no additional customer protections.

As you can see, the sales practices of futures APs who are employed by dual NFA/FINRA members are already subject to a comprehensive and effective regulatory regime. Applying FINRA's suitability standards to regulated futures products would result in duplicative, confusing regulatory requirements for these registrants without a corresponding increase in customer protection. Therefore, FINRA should not even consider expanding its suitability requirements to regulated futures products.



Thank you for the opportunity to comment on this issue. If you have any questions, or if we can be of any further assistance, you can contact me by e-mail at tsexton@nfa.futures.org or by telephone at 312-781-1413.

Very truly yours,

Thomas W. Sexton
Senior Vice President
& General Counsel

(kpc/CommentLetters/FINRA Suitability Rule)