From: Andy Small [asmall@scottrade.com]
Sent: Friday, June 26, 2009 6:06 PM
To: Comments, Public
Subject: Comments - FINRA Notice 09-25

June 26, 2009

Marcia E. Asquith

Office of the Corporate Secretary

FINRA

1735 K Street, NW

Washington, DC 20006-1506

Re: Notice 09-25 - Proposed FINRA Rules Governing Suitability and

Know-Your-Customer Obligations

Dear Ms. Asquith:

Scottrade, Inc. ("Scottrade") appreciates the opportunity to comment on proposed FINRA Rules 2111 and 2090 dealing with amendments to the NASD suitability rule and the adoption of new know your customer ("KYC") obligations for firms that were not previously New York Stock Exchange members.

Scottrade provides discount brokerage services to over two million active customer accounts through multiple online platforms and through over 400 branch offices. Scottrade does not make any recommendations or provide financial advice of any kind to our customers. Scottrade's registered representatives are salaried employees who are not paid directly on transaction-generated commissions and are not assigned specific customer accounts. Discretionary trading is not permitted. Most of Scottrade's business is conducted by a customer's interaction with electronic platforms, in which the customer never deals with any representative.

Scottrade has two primary concerns with the proposed rule changes. First, the proposal to replace the NASD suitability rule with a new FINRA suitability rule without reference to NASD's Policy

Statement regarding online suitability is incomplete. Second, Scottrade opposes adoption of the NYSE's KYC because it creates, in our view, unnecessary and costly record making and keeping obligations for firms that do not make recommendations.

1. Online Suitability Interpretation Should be Codified

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NASD published a Policy Statement in Notice to Members 01-23 providing members with guidance concerning their obligations under the NASD general suitability rule in an electronic environment. The guidance has served as an important analytical framework for firms in determining whether online services would be considered recommendations by NASD and now FINRA. Since FINRA's recent notice stated that the new FINRA suitability rule would codify various interpretations regarding its scope, Scottrade believes it is vitally important for the online suitability interpretations to be brought forward as part of a new FINRA suitability rule or specifically referenced as an applicable interpretation to FINRA's new suitability rule going forward.

2. Exempt "Discount Brokers" from the Proposed KYC Rule

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Scottrade opposes FINRA's proposal to adopt NYSE KYC rule to apply to firms who do not provide securities recommendations (i.e. "discount brokers") for four main reasons. First, FINRA has not articulated a compelling reason or provided any analysis for why obtaining investment objective and financial information from discount brokerage customers are essential facts. FINRA's apparent rationale for imposing NYSE rules on non-NYSE firms is set forth in a single sentence in Notice 09-25. The sentence says that the proposed KYC "...information may be used to aid the firm in all aspects of the customer/broker relationship, including, among other things, determining whether to approve the account, where to assign the account, whether to extend margin (and the extent thereof) and whether the customer has the financial ability to pay for transactions." This conclusion seems based on supposition rather than any factual basis. Scottrade certainly can understand a new rule to collect and retain information if it is justified by the circumstances like when a firm is making a recommendation. However, Scottrade is unaware, and FINRA has not articulated, any industry-wide problem of a magnitude that would justify treating all discount brokerage accounts like full service brokerage accounts. Furthermore, FINRA should not conclude that firms that have not historically collected KYC information do not have a solid basis to make decisions regarding the customer/broker relationship applicable to our business. To the contrary, Scottrade uses multiple third party sources of information to learn the essential facts about customers needed to conduct our discount brokerage business. These essential facts are used by Scottrade to: a) verify customer identity for AML purposes; b) allow us to make informed credit extension determinations; and c) prevent fraud losses. Obtaining investment objectives and financial information from customers does not aid us, and frankly adds no value, in making these determinations.

Second, Scottrade believes that FINRA should harmonize any new record-making and record-keeping rules with the SEC's books and records rules unless there is a compelling reason for not doing so. In this case, FINRA should take a consistent approach with that of the SEC and exempt discount brokers from its proposed KYC rule. In 2001, the SEC amended its books and records rule and adopted the "account record" rule. As initially proposed by the SEC, the account record rule like the proposed KYC rule would have required all broker-dealers to obtain investment objective and financial information such as annual income and net worth from customers. However, in adopting the final rule in 2001, the SEC exempted firms that did not make recommendations from the requirements of the rule when it realized that requiring firms to gather and retain information used in making suitability determinations when the firm had no obligation to make a suitability determination was an unnecessary burden. As such, we urge FINRA to come to the same conclusion as the SEC and exempt online brokers from the proposed KYC rule.

Third, Scottrade believes that the costs of requiring online brokers to gather new information far outweigh any perceived benefit. As stated above, we do not believe that there are any significant benefits of having the proposed KYC rule apply to discount brokers. Even if FINRA does perceive benefit to having discount brokers gather the proposed KYC information, it should analyze these perceived benefits in relation to the costs of implementing the changes for discount firms. In our case, the proposed KYC rule would force technology and procedural changes in numerous parts of our business. For example, it would force changes in our online account application. Paper applications would also have to be changed. We would need to modify our information collection technology and our account opening processing engines. Our electronic workflow process would need to be modified. We would also need to modify our databases and other electronic storage systems to accommodate the additional information that the proposed rule would have us retain. These changes provide no benefit to customers who open accounts with us. Our customers do not want, and we do not provide, advice or recommendations. The proposal could lead to discount brokers to pass these unnecessary costs on to customers, which inhibits customer choice in the brokerage business.

Fourth and lastly, requesting all customers to furnish investment objectives and financial information is likely to mislead customers into believing that broker-dealers are monitoring their self-directed trades to ensure consistency with account information. In the discount brokerage model, it is unlikely for firms to monitor transactions for this reason. Some firms offer both advice and discount brokerage services. We believe it is important for the public to be able to distinguish discount brokers from firms offering advice. A key to clarity on this issue is permitting discount brokers to use a new account applications that are not required to include traditional full service broker questions like investment objective and financial information. Scottrade urges FINRA to keep the distinctions between full service and discount brokers in new account application requirements separate and distinct.

In summary, Scottrade believes that it is necessary for regulatory clarity for FINRA to codify or otherwise incorporate the NASD Online Suitability guidance into the FINRA suitability rule. On the proposed KYC rule, Scottrade opposes applying the proposed rule to firms that do not by choice make recommendations to customers and requests that these firms be exempt from the proposed rule.

We thank you for your consideration of our comments. If we can be of any assistance, please do not hesitate to contact me.

Sincerely,

Andrew C. Small

General Counsel