

From: Brendan Daly [bdaly@commonwealth.com]
Sent: Thursday, June 25, 2009 10:30 AM
To: Comments, Public
Subject: Comments to Regulatory Notice 09-25, Suitability and "Know Your Customer"

VIA ELECTRONIC MAIL

June 25, 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"
Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

In its Regulatory Notice 09-25, FINRA has proposed the consolidation and expansion of FINRA rules governing suitability and know-your-customer obligations. The modified rules would, among other things, codify various SEC and FINRA interpretations and expand the scope of the suitability rule to include non-securities-related recommendations.

Commonwealth Financial Network[®] (Commonwealth) is an independent broker/dealer and an SEC registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 registered representatives who are independent contractors conducting business in all 50 states.

Commonwealth appreciates the opportunity to comment on the proposals. While we understand the need to protect investors, we strongly oppose any effort by FINRA to broaden the suitability obligations of members to products and services over which FINRA has no authority or jurisdiction.

Proposed FINRA Rule 2111. Suitability

The "reasonable basis" standard of the proposed rule requiring members and associated persons to consider factors such as age, other investments, financial situation and needs, tax status, investment objectives and experience, time horizon, liquidity needs, risk tolerance, and so on, is a familiar concept to many broker/dealers, and Commonwealth does not challenge the proposed language in the context of securities products.

On its face, the language of the proposed rule does not appear to expand the suitability requirements to non-security products such as insurance products or investment advisory services. FINRA has requested comment, however, on whether it should propose an expansion of the suitability rule to "investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities." FINRA cannot use the catch-all concept of fair dealing to usurp the authority of state and federal regulators and expand into new territory. To the contrary, FINRA may only exercise the authority granted to it by the SEC. Therefore, Commonwealth strongly opposes any such expansion of the suitability requirements to non-securities products.

For example, broker/dealers currently have no supervisory obligations under existing rules with regard to the sale of fixed insurance products. The proposed rule would lead to regulatory redundancy and contradiction with existing state insurance regulations that are already in place and would force broker/dealers to follow inconsistent or redundant suitability rules.

Financial planning by investment advisers is another activity that is currently governed by state or SEC rules and regulations. Adding redundant or inconsistent suitability standards to an already highly regulated business that is subject to the more stringent fiduciary standard would not further the goal of investor protection. Rather, it would only serve to add to the morass and complexity of multiple regulatory schemes and would arguably be in conflict with the fiduciary standard applicable to investment advisers today.

Timing of the Proposed Rule

We urge FINRA to delay the proposed rule in light of President Obama's recent Financial Regulatory Reform proposal, wherein it is recommended that the SEC establish "a fiduciary duty for broker-dealers offering investment advice and harmonizing the regulation of investment advisors and broker-dealers." The resolution of this important public policy matter may negate the Proposed Rule, and, as such, it is premature for FINRA to propose a revision to the suitability rule at this time. If FINRA were to proceed with the proposal, which would require firms to modify policies, procedures, and systems reasonably designed to comply with the revised suitability rule, the implementation of such changes by member firms would be costly and wasteful in the event the suitability rule is negated by a new fiduciary rule. Therefore, FINRA should delay the adoption of new suitability requirements until policymakers have settled the broader issue of the appropriate standard of care applicable to broker/dealers.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,

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