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

Re: **Comment re Regulatory Notice 09-25**

Dear Ms. Asquith:

We write to address the proposed Rule 2090, also known as the "Know Your Customer" rule, which is intended to replace NYSE Rule 405 to the same effect. Our concern is that, while the discussion of the proposed text speaks to having sufficient financial information to determine such traditional Rule 405 concerns as the ability to pay for purchases and to repay margin debt, the actual text expands the traditional "essential facts" to include the "customer's investment objectives and policy".

While "investment objectives and policy" may be appropriate information for a broker in the full service business model, we feel it inappropriate to mandate that such information be "in the file" of firms whose business model does not include affirmative recommendations of securities to customers. This is particularly true of self-directed accounts accessed via computer on the internet where customers execute trades by the click of a mouse without any human interface with the brokerage firm. Nor is there any need for that information to be "in the file" of clearing firms, who do nothing more than process orders from correspondent firms and issue account statements, all without any involvement with the customer. Indeed, requiring a clearing firm to maintain this information as well as the introducing firm – which has the primary if not exclusive contact with the customer – would create a needless redundancy of effort, expense and information storage.

In addition to the creation of unnecessary effort and expense, there is also a significant concern that, despite decades of case law and regulation protecting limited service brokerage firms and clearing firms from any liabilities in regard to investments they did not recommend and the conduct of others whom they are not required to supervise, it will not be long before clever counsel for investors will be arguing to panels "that the only point of the rule requiring clearing and limited service firms to have this information, must be for them to check to be sure that every investment in the account is consistent with it." That possibility should not be visited on firms who do not recommend specific strategies or securities, and which may not have any customer contact other than for occasional administrative and clerical matters.

We note that there are numerous prior NASD interpretative bulletins for Rule 2310 which expressly limited suitability to the affirmative act of recommending an investment and which should not now be called into any doubt by the new rule's text. Similarly, NYSE Rule 382's adopting notice permitted the obligations under Rule 405 to be allocated between the introducing firm and the clearing firm. It would be prudent for the new rule and/or its adopting text to expressly reaffirm and preserve those clear delineations.

Thank you for your consideration of these concerns.

Best regards,

Matthew Farley

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