VIA ELECTRONIC MAIL

June 17, 2009

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

RE: Consolidated FINRA Rulebook, proposed FINRA Rule 2111 - Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

Financial Industry Regulatory Authority (FINRA) published a Regulatory Notice 09-25 requesting comment on the consolidation of NASD Rule 2310, addressing suitability obligations and NYSE Rule 405, addressing know-your-customer obligations. If adopted, with revisions, the proposed FINRA Rule 2111 "Governing Suitability and Know-Your-Customer Obligations" could codify various interpretations regarding the scope of the suitability rule, clarify the information to be gathered and used as part of a suitability analysis and create a clear exemption for recommended transactions involving institutional customers, subject to specified conditions.

MWA Financial Services, Inc. is a wholly owned broker/dealer of an insurance company. The firm's business mix is simple, consisting of non-proprietary mutual funds and variable products, general securities through a fully disclosed brokerage arrangement and a proprietary variable annuity. The vast majority of our representatives are Series 6 licensed. We appreciate the opportunity to comment on this proposed rule.

We applaud FINRA for drawing the distinction between a representative either making a recommendation or receiving a customer order concerning a securities transaction. At times, customers believe certain transactions would be beneficial in a new or existing account. At the same time, a representative may not agree that the transaction is suitable,

but is not able to dissuade the customer. The representative makes a decision to effect the trade (not recommended) in order to retain the customer and documents the transaction as a "non-solicited trade".

However, our firm has two concerns with Proposed Rule 2111 that we would like to bring to FINRA's attention:

First: We are concerned with the "reasonable expectation that the customer has the financial ability to meet such a commitment" language added to the suitability requirements in .03 Customers' Financial Ability of Rule 2111. Our firm and associates are acutely aware of the significance of thoroughly knowing-your-customer. We train our representatives and reviewing principals on suitability, what information to collect, how to obtain specific information as directed in NASD Rules 2110, 3011 and SEC 326 and how to use that information to provide the best possible products and services we offer to meet the needs of each customer.

From a representative's prospective, with the information provided from an investor at the time of the application, reasonable expectation that the investor will be able to meet the financial commitment could very quickly become unreasonable with the loss of a job particularly given the economic reality of today. Further, how can a reviewing principal be expected to judge the reasonable ability of a customer to meet a financial commitment at some point in the future?

We agree that any suitability rule should be fundamental to fair dealing and should promote ethical sales practices and high standards of professional conduct, thereby, protecting the investor from securities abuse. However, to meet this particular proposed expectation and comply with this proposed wording, firms and their associates would need to develop the art of fortune telling and how to read a crystal ball.

How many times has all of humanity taken a look at their own past and proclaimed, "if only I had known <you can fill in the blank>, I would have done things differently." Too

often FINRA uses hindsight and after the fact knowledge to apply "**reasonable**" at the point of sale.

As the rule book consolidation progresses, we encourage FINRA to apply reasonable to "at the time of the transaction, with the knowledge provided by the investor" and not apply the "should have known" to circumstances that occur some time in the future or after the transaction. This proposed wording allows for too much interpretive latitude.

Second: Under The Scope of the Proposed Suitability Rule the last paragraph, last sentence: "In light of the more expansive application of some FINRA rules, such as those addressing just and equitable principles of trade and communications with the public, and given the seamless nature of a broker-dealer's business in providing financial services, FINRA also seeks comment on whether it 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."

Our firm strongly opposes FINRA's proposal to expand suitability obligations to any recommendations beyond the scope of their jurisdiction. In addition, we would suggest FINRA clearly define each term so firms and regulators could consistently apply the rules. For example, most state insurance regulations require that the term "investment" not be used in conjunction with traditional life products, including fixed annuities. Therefore, the term "investment" must be clearly defined as a securities product and not apply that term to a fixed annuity.

We understand and daily work in the realm of "the seamless nature of a broker-dealer's business in providing financial services." However, to attempt to apply the suitability rule as significant in promoting fair dealing with customers and ethical sales practices, beyond as it pertains to securities, definitely is outside FINRA's purview.

We encourage FINRA to consider a rule that explicitly applies suitability obligations to a recommended transaction or investment strategy involving only a **security or securities**. We believe a distinct clarification stated in the new rule would take some of the consternation out of the longstanding decisions and other interpretations by regulators attempting to govern beyond the scope of the securities by stating that NASD Rule 2310 covers both recommended securities and strategies in general. Therefore, we strongly oppose a more expansive application of the rule to have the proposed suitability rule apply to any recommendations concerning non-securities products or strategies.

For over 60 years, The McCarran Ferguson Act has allowed each state to regulate its own insurance sales practices. Most states have already enacted "Suitability Standards" for representatives that sell insurance products. Representatives are required to fill out certain forms that cover, financial status, tax status, investment objectives and any other information considered pertinent to be able to make a sound recommendation of insurance to the customer.

Our representatives sell traditional life insurance products through our parent insurance company. The issuing of those products is the responsibility of the parent company which is regulated by the individual states as mentioned above. Our firm does not offer these products. However, this proposal could blur those lines of responsibility and add a redundant layer of due diligence to the issue process, thereby, opening the door for conflict between two separate suitability reviews and delaying delivery of the contract. It would create a financial, as well as, a personnel burden, for many similar firms. Processing systems would be bogged down while affording no meaningful protection for investors or providing a safeguard to the securities market.

Our representatives also recommend financial strategies, many that do not involve securities. Under this proposal, the firm would be responsible for the suitability of any strategy recommended. How could a firm be expected to properly supervise a trust established and held at a bank? How could a firm be expected to adequately supervise an

estate plan created by an attorney? It is preposterous to hold firms accountable for recommended strategies outside of their stated responsibility as a member of FINRA.

Further, FINRA should not place the burden on firms, expecting them to monitor representatives' outside business activities where there is no possibility of affecting the securities markets or investor. Firms would need to train registered principals well beyond the scope of securities. The inconceivable consequences would be firms taking the role of "big brother", watching the representatives' every move and having adequate principals with the knowledge to correctly supervise the activity… **an impossibility**.

FINRA needs to focus on protecting the **investing** public. In the consolidation process of harmonizing and streamlining existing rules, FINRA needs to enact and then enforce rules within its jurisdiction. According to FINRA publications, "FINRA is a trusted advocate for investors, dedicated to keeping the markets fair, ensuring investor choice and proactively addressing emerging regulatory issues before they harm investors or the markets." This statement does not allow for FINRA to venture into territory outside of the securities industry. FINRA "is the largest independent regulator for all securities firms doing business in the United States. All told, FINRA oversees nearly 4,900 brokerage firms, about 173,000 branch offices and approximately 651,000 registered securities representatives." We encourage FINRA to focus on its stated mission.

We appreciate that the consolidation of rulebooks must be a daunting task, assuring that all contingencies are regulated adequately. However, we feel the scope of the consolidated rule book needs to focus on just and equitable trade as it pertains to securities only.

Sincerely,

Pamela Fritz
Chief Compliance Officer
MWA Financial Services, Inc.