LPL Financial

Stephanie L. Brown
Managing Director
General Counsel

One Beacon Street, 22nd Floor
Boston, MA 02108-3106
stephanie.brown@lpl.com
617 897 4340 *office*
617 556 2811 *fax*

9785 Towne Centre Drive
San Diego, CA 92121-1968
858 909 6340 *office*
858 646 0609 *fax*

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BY EMAIL TO: pubcom@finra.org

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

RE: **FINRA NTM 09-25:** Suitability and "Know Your Customer;" Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Dear Ms. Asquith:

LPL Financial Corporation ("LPL")[1] appreciates the opportunity to comment on proposed FINRA Rule 2111 and proposed FINRA Rule 2090. These proposed rules, if adopted, would have significant implications for independent broker-dealers such as LPL, independent financial advisors and their end clients. LPL believes certain provisions of the rules require reconsideration or further refinement. As discussed further below, LPL has specific concerns with respect to the following aspects of the proposed rules:

- Application of suitability obligations to a recommended transaction or investment strategy involving a security or securities;
- Expansion of the factors to be considered in determining suitability for a particular client and the intersection of those factors with the proposed know-your-customer standards; and
- Requirement that all information "known by" the broker-dealer be analyzed in determining suitability.

If adopted, these rules would greatly expand the scope of a financial advisor's suitability and know-your-customer obligations and would require significant changes and modifications to the policies and procedures maintained by member firms. Below, we explain the potential

[1] LPL Financial is one of the nation's leading diversified financial services companies and the largest independent broker/dealer supporting more than 12,000 financial advisors nationwide. It has offices in Boston, Charlotte and San Diego.

impact of the proposed rules and ask that FINRA consider clarifying or revising the proposals to take these concerns into consideration.

I. Application of Suitability Obligations to All Recommendations of Investment Products, Services and Strategies.

Proposed FINRA Rule 2111 applies suitability obligations not only to recommended transactions involving a security or securities but also to investment strategies involving a security or securities. This rule change raises concerns for LPL, as it is not clear how FINRA proposes to define "investment strategy." An investment strategy is generally understood to be a set of rules that serve to guide an investor's selection of an investment portfolio. How would an advisor or a firm impose suitability review in this context? Would the simple formulation of an investment strategy – even if no transactions are actually placed through the broker dealer – trigger the suitability obligations? Such an interpretation would seem to require an ongoing review by the advisor of a customer's entire investment plan in order to determine whether or not it meets suitability requirements. Furthermore, it is unclear how and when a member firm would conduct suitability reviews of such investment strategies. Limiting the application of suitability obligations to recommended transactions creates a clear trigger. For the sake of clarity and practicality, LPL urges FINRA to revise the proposed rule accordingly.

FINRA has also requested 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."[2] LPL opposes this broad expansion of scope. Non-securities products such as fixed annuities, life settlements, foreign exchange and commodities are already closely regulated by state and federal authorities. FINRA's proposal may create conflicting or redundant regulation for advisors and member firms and would not serve to better protect the end customer.

As you are aware, recently President Obama's administration, through the Department of Treasury, has introduced a proposal that advocates significant regulatory reform of the financial services industry. Aspects of the proposal address new customer protection requirements. Although it is difficult to predict the legislative outcome of the Treasury's proposal, it appears to be an inopportune moment to expand the scope of products or services subject to suitability review by member firms.

We suggest further analysis of this aspect of FINRA's rule consolidation and would gladly participate in a task force or committee organized to evaluate the topic.

II. Expansion of Suitability Factors and Intersection with "Know-Your-Customer" Obligations.

Proposed FINRA Rule 2111 and Proposed FINRA Rule 2090 combine to expand the amount of information required to be gathered from the end customer in order to open and maintain a customer account and to make suitability determinations. Proposed FINRA Rule 2111 requires that suitability be based upon facts known by the member or advisor or disclosed

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[2] FINRA RN 09-25, "Suitability and 'Know Your Customer,'" May 2009.

by the end customer in response to the member's or advisor's efforts to obtain the information. The proposed rule expands the list of elements required to be addressed when gathering information to include investment experience, investment time horizon, liquidity needs, risk tolerance and other investments. Proposed Rule 2090 requires that when opening and maintaining customer accounts, members must "know (and retain) the essential facts concerning every customer..." For purposes of the rule, the essential facts "include the customer's financial profile and investment objectives or policy."

LPL does not believe that the addition of the new elements in proposed FINRA Rule 2111 serves to protect the end customer; in fact, the application of this proposed rule may negatively impact the end customer's goals. Factors such as one's investment experience, time horizon and risk tolerance are ones to be considered when reviewing a customer's portfolio as a whole. However, they are not necessarily factors that need to be considered when reviewing each and every trade of individual securities. By imposing a requirement that advisors consider these "portfolio level" factors when making specific trades, FINRA would prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk and time horizons. Furthermore, the requirement that a firm or advisor collect information regarding a customer's "other investments" is simply untenable. This would seem to suggest that in order to meet suitability standards, firms and advisors would be required to have a complete view of a customer's entire portfolio – including any positions that are held at other firms. For all of these reasons, LPL opposes the addition of these new factors and urges FINRA to modify Proposed Rule 2111 accordingly.

In addition, LPL requests that FINRA clarify the language in proposed FINRA Rule 2090. Specifically, what does FINRA mean when it requires that members know each customer's "financial profile?" Does the term "financial profile" refer to the new elements that FINRA has included in proposed FINRA Rule 2111? If so, this would imply that each of these new elements would be required to be collected when opening of a customer account. It is critical that FINRA clearly explain its intentions, as the requirement to collect additional information upon account opening would have a material impact upon the operations and compliance functions of member firms.

Finally, LPL requests confirmation from FINRA that even if a customer refuses to provide certain information as required under proposed Rules 2111 and 2090, a member may still open the account so long as it has used due diligence to obtain such information. If this point is confirmed, we would then request clarification as to what FINRA would require from a documentary perspective to show that due diligence has been performed.

III. "All Facts Known" Threshold.

In addition to requiring the gathering of specific information as discussed in Section II above, proposed FINRA Rule 2111 also prescribes a significant change regarding the use of customer information as part of the suitability analysis. Whereas previously, the information required to be analyzed when determining whether a recommendation is suitable would include just the information disclosed by the customer in response to the advisor's reasonable efforts to

obtain such information, the proposed rule now requires that the advisor consider information about the customer that is "known by the member or associated person."

LPL is opposed to this new requirement, as it creates an obligation that is simply untenable in practical application. An advisor can only base his or her knowledge of a customer upon the information provided by the customer through the specified policies and procedures of such advisor's firm. LPL therefore opposes the adoption of this aspect of the proposed rule.

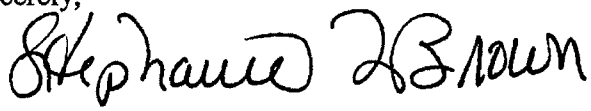
IV. Cost Implications and Implementation Period

Finally, LPL would like to note the significant cost implications for all broker-dealers that would be triggered by these rule proposals. Implementing such an expansion of the suitability and know-your-customer requirements (particularly if such standards were to apply to sales of non-securities) would require additional staffing and system enhancements, all of which would come at a substantial expense. For example, new account documentation would need to be revised to reflect additional suitability criteria. In many firms, including LPL, the customer's financial and other suitability information is provided in paper form and electronically. Systems would need to be updated, and the corresponding surveillance tools used by many firms would also require adjustment. Consequently, should any of these rule proposals be adopted, LPL would urge FINRA to incorporate an adoption period of no less than twenty-four months to give member firms time to update necessary forms, systems, policies and procedures.

V. Conclusion

LPL appreciates the opportunity to comment, and we thank you for your consideration of our concerns. Should you have any questions, please contact me at (617) 897-4340.

Sincerely,



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