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VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 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 Regulatory Notice 09-25 (“RN 09-25”), FINRA requested comment on proposed FINRA Rule 2111, a modified suitability rule for the Consolidated FINRA Rulebook. RN 09-25 “also seeks comment on whether it [FINRA] 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.” (the “Expanded Suitability Concept”)

This comment is being submitted on behalf of American Equity Life Insurance Company (“AELIC”) which very much appreciates the opportunity to comment on the Expanded Suitability Concept. AELIC primarily sells index and fixed rate annuities, which are not registered with the Securities and Exchange Commission (“SEC”).¹

AELIC believes that FINRA should not adopt an Expanded Suitability Concept. FINRA currently has a well thought out, well defined line of demarcation between those activities which are subject to a member’s supervision and those which are not. We are not aware, and do not

¹ We recognize that if Rule 151A under the Securities Act of 1933 withstands the current challenge in the United States Court of Appeals for the District of Columbia Circuit and goes into effect in January 2011 or sometime thereafter, the existence of the Expanded Suitability Concept will largely be irrelevant to insurance companies issuing fixed indexed annuities because the overwhelming majority of such products would be securities and recommendations concerning them would be subject to the suitability rules as currently written.

believe, that this line drawing has resulted in customers being the victims of abusive behavior for which they did not have adequate protection. Adopting an Expanded Suitability Concept would likely create a continuing series of interpretive questions as to whether the Expanded Suitability Concept applies and impose burdens on FINRA and its members which far exceed any perceived benefit for customers.

Currently, associated persons of a member are allowed to engage in outside business activities as long as, in accordance with NASD Rule 3030, the associated person notifies the member. While the associated person's obligation under Rule 3030 is fulfilled once notice is given and Rule 3030 does not require the member's consent, it is our understanding that members regularly use their position as an employer to discourage an associated person from engaging in a particular outside business activity which the member finds objectionable.

In contrast, Rule 3040 imposes a completely different regimen on an associated person's private securities transactions. The member must approve these activities, record them on its books and supervise them in the same manner it does the associated person's other activities on behalf of the member. Thus, the operation of Rule 3030 and 3040 divide these activities by associated persons into two categories, with appropriate regulation for each.

The adoption of an Enhanced Suitability Concept would blur the line and create uncertainty for both the member and the associated person. The key issue would be the meaning of "recommendations of investment products, services and strategies made **in connection with a firm's business**" (emphasis added).

For example, if the associated person is also a real estate agent, would an Expanded Suitability Concept apply to a customer's purchase of:

- 1) a primary residence;
- 2) a second home (does it matter if the second home is rented out never, 50% of the time, 90% of the time); or
- 3) a commercial building.

If the associated person is also a jeweler, would an Expanded Suitability Concept apply to the purchase of:

- 1) a high quality three caret diamond engagement ring, or
- 2) a bag of high quality loose diamonds.

If the associated person is also an insurance agent, would an Expanded Suitability Concept apply to the customer's purchase of:

- 1) a term life insurance policy;
- 2) a whole life insurance policy;
- 3) a universal life insurance policy;

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- 4) an immediate annuity;
- 5) an annuity with a specific rate guaranteed as long as the annuity is held;
- 6) an annuity with a minimum rate guaranteed and the possibility of excess interest each year; or
- 7) an equity index annuity.

All of these purchases have some investment element to them, including the purchase of the engagement ring and the primary residence. Not only would it be difficult to draw a clear line, in most cases the new suitability obligation would be in addition to already existing regulation. For example, insurance agents and insurance agencies are already subject to comprehensive state regulation.² Real estate agents are also subject to state licensing and continuing education requirements. Jewelry store patrons are covered by state consumer protection laws.

In addition, because principals presumably would have to conclude that the non-security recommendation was suitable, principals would need training so that they could sufficiently understand the non-security product in order to evaluate a recommendation to purchase or sell the non-security. Moreover, it might be necessary to revise FINRA's testing program to ensure that associated persons and the relevant principals had the minimum knowledge levels for their roles.

In summary, we believe that there is no demonstrated pattern of regulatory abuses for which customer protections under other laws have been found inadequate. In these circumstances, adopting an Enhanced Suitability Concept would tax FINRA's limited resources by creating a steady stream of difficult interpretive questions and requiring modifications of FINRA's testing and member inspection programs and would impose a burden on its members and associated persons without sufficient offsetting additional protections for customers.

We would be happy to answer any questions you have about these comments.

Sincerely,



Michael Berenson

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² We recognize that there is a difference of opinion as to the incremental benefits of adding the protections of the federal securities laws to the protections a purchaser of a fixed indexed annuity receives under state insurance regulation. However, it is difficult to assert that adding the protections of an Enhanced Suitability Concept would be a meaningful addition to the protections already afforded by state insurance regulation.