



June 29, 2009

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

Re:Regulatory Notice 09-25  
Proposed Amendments to the Suitability and Know Your Customer Rule

Dear Ms. Asquith:

The National Association of Independent Brokers-Dealers, Inc. (NAIBD or the association) was formed in 1979 to positively impact rules, regulations, and legislation by facilitating a consistent, productive relationship between industry professionals and regulatory organizations. The association is national in scope with 350+ Broker-Dealer and Industry Associate Members.

NAIBD appreciates the opportunity to comment on the proposed rule noted above. We hope that our expressed views will have constructive value in presenting alternatives, issues and concerns regarding the new rule proposal, and that our responses to specific questions posed in the Regulatory Notice are informative.

NAIBD recognizes and appreciates the extent to which consolidation of the NYSE and NASD rules presents opportunities to streamline and modernize existing rules. This opportunity is especially compelling when applied to rules with such fundamental importance as suitability rules addressed in Notice 09-25.

Respectfully, NAIBD asks that FINRA consider the following comments and/or alternatives in respect to the proposed suitability regulation:

NAIBD members are concerned that extending the suitability rule to non-securities, as FINRA proposes, presents broad and complex challenges to firms that may be at minimum redundant at worst insurmountable where overlapping and/or redundant regulations cannot be practically reconciled. We strongly urge FINRA to reconsider any reference to non-securities in its proposed rule.

While NAIBD supports a "know your customer" principle, and does not object to minor changes to required information at the time of account opening, we believe that, as proposed, the expanded requirements for "essential information" create unnecessary confusion regarding specific suitability requirements versus what may otherwise require subjective or supervisory intervention or analysis. We believe Rule 2010 (formerly 2110) to be adequate in regard to the

“know your customer’ standard and/or that additional regulatory guidance related to Know Your Customer should be appended to rule 2010 rather than to proposed rule 2090.

Also, to the extent that minor changes are made to the document and information gathering requirements, we request guidance as to whether or not an associated person’s attempt together the information proposed on the FINRA’s model new account application will suffice and/or will be amended to reflect the regulator’s expectations.

NAIBD supports modernization of the institutional customer suitability guidance, but objects to the added requirement that an institutional customer affirmatively forego the customer-specific suitability requirements. We believe that two of the three factors proposed by FINRA are adequate. Specifically, we believe that an affirmation is unnecessary if:

- the firm or associated person has a reasonable basis to believe that the institutional customer is capable of analyzing the risks of investments independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and
- the firm or associated person has a reasonable basis to believe that the institutional customer is exercising independent judgment in evaluating the recommendations.

Further, we assert that circumstances may exist in which the institutional party, and/or its agent (such as an investment adviser) would not be willing or able to affirm the waiver due to a variety of factors including contractual obligations, board or trustee limitations, among others.

Finally, contrary to the rule as proposed, NAIBD believes that the interpretive Memorandum 2310-3 definition of \$10 million invested in securities and/or assets under management is a more appropriate standard for purposes of the institutional account suitability exemption and should be retained in the new rule rather than referencing the Rule 3110(c)(4) standard of at least \$50 million in total assets. We believe that many highly sophisticated institutional brokerage customers would not satisfy the \$50 million dollar asset threshold but would not need the protections of the suitability rule.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

// Lisa Roth //

Lisa Roth  
Association Past-Chairman  
Chair, NAIBD Member Advocacy Committee