



Cornell University
Law School

Lawyers in the Best Sense

WILLIAM A. JACOBSON
Associate Clinical Professor of Law

G57 Myron Taylor Hall
Ithaca, New York 14853-4901
T: 607.255.6293
F: 607.255.1209
E: waj24@cornell.edu

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Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission,
100 F Street, NE.
Washington, DC 20549-1090

**RE: FINRA Request for Comment SR-FINRA-2010-39 (Proposed Consolidated
FINRA Rules Governing Suitability and Know-Your-Customer Obligations)**

Dear Ms. Murphy:

The Cornell Securities Law Clinic (the “Clinic”) welcomes the opportunity to comment on the amended proposal (the “Rule Proposal”) of the Financial Industry Regulatory Authority (“FINRA”) to adopt in the Consolidated FINRA Rulebook the NASD suitability rule and the New York Stock Exchange “know your customer” rule. The Cornell Securities Law Clinic (the “Clinic”) is a Cornell Law School curricular offering, in which law students provide representation to public investors as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

On June 27, 2009, the Clinic filed a comment letter generally supporting the original proposal while suggesting certain changes. As before, the Clinic generally supports the Rule Proposal and feels that it is an important step in protecting investors and clarifying a member’s responsibility to its customers. However, the Clinic would like FINRA to reconsider the three following suggestions, which the Clinic previously offered, due to their significance in furthering the goals of investor protection and establishing clear rules.

I. Rule 2090 Should Require Supervision of “Every Order.”

According to FINRA, Proposed Rule 2090 “captures the main ethical standard of NYSE Rule 405(1);” however, the Proposed Rule eliminates the requirement to learn the essential facts



of “every order.”¹ Instead, Proposed Rule 2090 only requires that members learn the essential facts of “every customer.”² The Clinic feels this is an unnecessary change that may create confusion without providing any additional benefits.

First, a member may interpret the requirement to know a customer to be less rigorous than the one that required the member to know every order, because it may be argued that one can exercise due diligence to reasonably know a customer without having to know every order. Retaining the language “every order” would prevent such confusion. Moreover, even if other order-specific rules cover most, if not all, the responsibilities that “every order” was intended to cover, there is no harm in retaining the language.³ In fact, if the other rules require members to know every order, then it seems more accurate to state that members, to satisfy their “know your customer” requirements, should know “every order” as well as “every customer.”

II. Explicitly State that “Strategy” Includes “Hold”.

Proposed Rule 2111 provides that an associated person needs “a reasonable basis to believe that a recommended transaction or investment strategy” is suitable for the customer.⁴ This is clearly an improvement over NASD Rule 2310 (which only covers recommendations for “the purchase, sale or exchange of securities”)⁵ as it would cover recommendations that do not result in a transaction.

The exact scope of the term “strategy” is open to interpretation, and supplementary material .02 provides that the phrase “investment strategy . . . is to be interpreted broadly.” This broad interpretation should undoubtedly include recommendations to hold a security or securities. Indeed, in the Rule Proposal (at 24), FINRA specifically acknowledges that the term “strategy... would cover *explicit* recommendations to hold a security or securities.”

FINRA should make this clear by explicitly stating in the rule or supplementary material, as it did in its Notice, that “investment strategy” covers “explicit recommendations to hold a security or securities.”⁶

¹ Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, 75 Fed. Reg. 51310 (proposed Aug. 13, 2010) (Hereafter, “Notice”)

² *Id.*

³ *Id.*

⁴ See Proposed FINRA Rule 2111(a).

⁵ NASD Rule 2310(a)

⁶ Notice, *supra* note 2, at 51316.

III. **Retain Examples in IM-2310-2 and in IM-2310-3.**

The Clinic agrees with FINRA's assessment that eliminating examples (1)-(3) in IM-2310-2 (explaining what activities constitute a violation of fair dealing responsibility) and the relevant considerations whether an institutional exemption applies in IM 2310-3 will not likely change anything substantive, and that the examples may be covered by other rules or well settled precedent.⁷

However, clarifying examples pertinent to a rule, even if they are covered elsewhere, should not be considered redundant. Concrete examples help crystallize otherwise abstract notions embodied in rules. Such examples are particularly useful when dealing with the standard of "reasonable basis" that underlies the institutional account exemption. Thus, even if there may be some redundancy, it is outweighed by the benefit of additional clarity.

Conclusion

The Clinic appreciates the opportunity to comment on FINRA's Rule Proposal. The Clinic supports the Rule Proposal, though it would like FINRA to reconsider some of the Clinic's previous suggestions. The retention of "every order" in Proposed Rule 2090, the explicit inclusion of "hold" under investment strategies in Proposed Rule 2111, and the retention of examples and considerations found in IM-2310-2 and IM-2310-3 would help ensure that there are no future misunderstandings.

Respectfully Submitted,

William A. Jacobson

William A. Jacobson, Esq.
Associate Clinical Professor of Law
Director, Cornell Securities Law Clinic

Bill Ye

Bill Ye
Cornell Law School '12

⁷ *Id.* at 51312