



National Association of Insurance and Financial Advisors

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June 29, 2009

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

Via Electronic Mail: pubcom@finra.org

Re: FINRA Regulatory Notice 09-25 -- Request for Comments on Expansion of Suitability Obligations

Dear Ms. Asquith:

This letter presents the views of the National Association of Insurance and Financial Advisors ("NAIFA") in response to FINRA's invitation to submit comments on the issue of "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."

NAIFA comprises more than 700 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's oldest and largest trade association of insurance and financial services professionals. The Association's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. Over half of all NAIFA members are licensed as registered representatives of broker-dealers and market and service mutual funds.

FINRA recently issued Regulatory Notice 09-25, in which FINRA proposes to consolidate FINRA rules governing suitability and know-your-customer obligations. NAIFA agrees with the general spirit of the proposed rule change, and recognizes the importance of investor protection. Indeed, we applaud and support FINRA's continued efforts to safeguard investor interests. However, of particular concern to NAIFA and its members is that part of Notice 09-25 in which

FINRA asks for comments as to whether FINRA should expand its suitability obligations to all recommendations of investment products, services and strategies, regardless of whether they include securities.

NAIFA's concerns are based on our belief that the expansion by FINRA of its suitability obligations beyond recommendations involving securities products would be both unnecessary and inappropriate. The result of broadening the scope of the suitability obligations would appear to be that a registered representative would have to run all recommendations of investment products, services and strategies through the broker dealer and conduct a FINRA suitability analysis for all investment products and strategies recommended by the representative, regardless of whether or not the recommendation involved securities. NAIFA believes that requiring registered persons to conduct suitability analyses for non-securities products would waste valuable resources, provide no benefit to the consumer, and likely be rendered moot by changes to the financial regulatory system currently being considered by policymakers.

NAIFA therefore opposes expanding the scope of FINRA's suitability rules and obligations to include recommendations that do not involve securities. Our comments will focus on the following points:

- First, FINRA does not have jurisdiction over products and services that are not securities and its authority should not be expanded to include such products and services. FINRA lacks the resources and expertise to oversee non-securities products, and this change would make oversight of the products currently within its jurisdiction less effective. Additionally, brokerage firms themselves may not be qualified for this undertaking, and there is no reason brokerage firms should be supervising non-brokerage activities and transactions.
- Second, insurance (including fixed annuities) and other non-securities products are already subject to comprehensive regulation by state regulators, and the application of FINRA rules to these products could result in duplicative or conflicting regulatory requirements. In light of the existing system of comprehensive state level supervision, the expansion of FINRA's suitability obligations is unnecessary and will provide no additional protection for the consumer.
- Third, the additional costs and burdens associated with expanding FINRA's suitability obligations to apply to products, services and strategies that do not involve securities will likely have an adverse impact on the level of services available to mid- and small-market clients and accounts.
- Fourth, broad changes to the current regulatory system for broker/dealers and investment advisors are being contemplated by policymakers, and an effort by FINRA to revise suitability requirements may quickly become moot.

1. The suggested expansion of FINRA’s suitability obligations is not within FINRA’s jurisdiction and would result in costly duplication, inefficient application, and ineffective oversight.

The proposal suggests expanding the scope of FINRA’s suitability rules and obligations to include recommendations that do not involve securities. FINRA does not have jurisdiction over transactions, products and services that do not involve securities and this change would give FINRA power beyond its mandate.

The proposal also poses important administrative problems, because neither FINRA nor broker/dealers have the resources or product-specific expertise necessary to oversee non-securities products or transactions. It is unrealistic to assume that FINRA and broker/dealers will be able to immediately understand the multitude of products that FINRA will likely classify as “investment products” in sufficient detail to accurately determine the suitability of a product or recommendation.

In order to implement and maintain oversight of non-securities transactions, both FINRA and broker/dealers would have to expend time and resources that would be better used on more effective regulation of higher-risk securities-based transactions. FINRA should avoid a situation in which the attention of its regulators is spread too thin, because consumers would ultimately be better served by regulatory oversight that is focused on financial products that are within FINRA’s area of expertise and that carry a higher degree of risk for the consumer.

2. The proposal is duplicative because insurance and other non-securities products are already subject to comprehensive regulation by state regulators.

For insurance agents, the proposal is duplicative because insurance products, including fixed annuities, are already subject to comprehensive regulation at the state level, through the efforts of state insurance departments and other state regulators. Moreover, state regulators in over 40 states have already adopted annuity suitability laws based on their unique understanding and knowledge of the products over which they have jurisdiction. The application of FINRA rules to these products could result in harmful, conflicting, and confusing regulatory requirements that will detract from the goal of effective consumer protection. Additionally, this change would be contrary to current governmental and regulatory efforts to modernize the regulatory structure and eliminate costly duplication.

The proposal will provide no additional protection for the customer, because of the existing system of supervision and the relatively low risk of non-securities transactions. FINRA is considering fixing something that is not broken, and there is no need to increase the amount of oversight over products that are already subject to a comprehensive regulatory structure.

3. Expanding FINRA’s suitability obligations to apply to products, services and strategies that do not involve securities will likely have an adverse impact on the level of services available to mid- and small-market clients and accounts.

Expanding the scope of suitability obligations in the manner suggested by FINRA would have the unintended consequence of leaving mid- and small-market clients and accounts

with fewer options available for financial representation and with a lower level of client services if they are able to find someone willing to work with them. If suitability obligations and responsibilities are broadened in the manner being considered, many registered representatives would likely drop their registrations altogether or stop serving the middle and lower market clients and accounts. This is due to the fact that serving the middle and lower markets would no longer be cost effective for many registered persons, due to the additional costs, expenses, potential for liability and administrative burdens associated with the expansion of suitability obligations. Consumers will not be placed at risk if the scope of these suitability obligations is not expanded; as indicated above, consumer interests are effectively protected by the comprehensive state regulatory system that is already in place.

4. The timing of the proposal is inappropriate because policymakers are currently debating broad changes to the existing regulatory system for broker/dealers and investment advisors.

As a final point, broad changes in financial regulation are currently being contemplated by policymakers on Capitol Hill, in the Administration, the SEC, and FINRA, as well as private sector stakeholders. In addition to considering major reforms to the structure of the regulatory system, these policymakers are debating issues concerning the standards of care that broker/dealers and investment advisors owe to their clients, and considering whether such standards should be expanded or changed going forward.

It would be inappropriate for FINRA to expand or revise current suitability requirements while this debate is underway, as further broader-scale changes may be made within a matter of months.

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In sum, NAIFA strongly urges that FINRA not consider expanding suitability obligations to cover all recommendations of investment products, services and strategies made in connection with a firm's business. Thank you for your consideration of our views. Please contact the undersigned if you have any questions regarding our comments.

Yours Truly,

/s/ Gary A. Sanders

Gary A. Sanders
Vice President, Securities and State
Government Relations