

Compliance

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September 9, 2010

www.sec.gov/rules/sro.shtml

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

**RE: File Number SR-FINRA-2010-039
Proposed Rule Change to Adopt Finra Rules 2090 (Know Your Customer) and
2111 (Suitability)**

Dear Ms. Murphy:

Charles Schwab & Co., Inc. ("Schwab") appreciates the opportunity to comment on proposed consolidated FINRA rules governing suitability and know-your-customer obligations. Schwab believes that broker-dealer suitability obligations provide fundamental protections for the investing public, and appropriately serve as a foundation for effective investor protection. We appreciate FINRA's thoughtful consideration of, and response to, the comment letters submitted for the original proposal, and believe the rule as currently proposed is a meaningful improvement over the original proposal. At the same time, in light of the ongoing Securities and Exchange Commission (the "Commission") study of standards of care of broker dealers and investment advisers providing personalized investment advice, we believe it appropriate that the Commission consider FINRA's existing and proposed suitability and know your customer rules as part of its study of standards of care and that final action on the FINRA rule be deferred pending completion of the study and implementation of any resulting recommendations.

FINRA's proposed Rule 2090 (Know Your Customer) and Rule 2111 (Suitability) create new regulatory requirements that will require firms to review and make material changes to policies, procedures, new account documentation and systems. Among other requirements, the proposal expands the explicit list of information that broker-dealers and associated persons will have to gather and analyze. To comply, firms will need to amend new account forms to request and capture customer information for each of the new categories. Firms will also need to change their systems to capture the new categories of information and make that information available to registered representatives. Internal advice policies and procedures will need to be reviewed and amended as warranted to address how representatives should consider these new categories of information when

recommending different types of securities and strategies. Supervisory procedures and surveillance programs will also need to be reviewed, amended and enhanced as warranted to monitor compliance with these new requirements. The implementation of these changes will require significant investment of financial, technology and human resources across the industry.

The Commission is undertaking a study of the obligations and standards of care of broker-dealers and investment advisers providing personalized investment advice about securities to retail investors as required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The study will evaluate whether there are gaps, shortcomings, or overlaps in such standards of care that should be addressed by rule or statute. Recommendations from the study may result in new or different regulatory requirements being imposed on broker-dealers that may be inconsistent with or subsume the detailed prescriptive requirements of FINRA's suitability rule. It is possible that the recommended standard of care will include a principles based, not a rule based, concept of suitability. Because the standard of care issue is open and under separate review by the Commission, it does not seem appropriate to issue new FINRA suitability and know your customer rules now, particularly given the significant costs associated with implementation.

In its rule filing, FINRA rejected suggestions from "numerous" commenters that FINRA should not move forward with the proposed changes until after policymakers determine whether broker-dealers must comply with fiduciary obligations. In rejecting these suggestions, FINRA noted that the application of a suitability standard is not inconsistent with a fiduciary standard and that suitability obligations constitute a material part of a fiduciary standard in the context of investment advice and recommendations. However, accepting that the concept of suitability is material component of a fiduciary obligation does not imply that FINRA's prescriptive rule based definition of suitability is necessarily incorporated into a fiduciary standard. In fact, as applied to investment advisers, suitability is a principles based concept underlying their fiduciary obligations. Unlike broker-dealers, investment advisers are not required by rule to make reasonable efforts to collect and analyze customer information in specific defined categories for every customer to whom the adviser makes a recommendation. It is possible that the SEC study may conclude that the more flexible, principles based concept of suitability applicable to investment advisors is also appropriate for broker-dealers if paired with additional principles based duties of care.

Schwab does not believe that there is an urgent, time sensitive need to amend FINRA's suitability rules as proposed. In light of the SEC study and possibility of material changes in the standards of care of broker-dealers and investment advisers providing personalized investment advice, we believe it appropriate and prudent for the SEC to consider FINRA's existing and proposed suitability rules as part of its study and to defer final action on FINRA's proposal pending resolution of the study and its recommendations.

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Schwab appreciates the opportunity to provide comments and thanks the Commission for its consideration of the points we have raised in this letter. Please feel free to contact me at (415) 667-0866 to discuss them in more detail.

Sincerely,



Bari Havlik
SVP and Chief Compliance Officer
Charles Schwab & Co., Inc.