

Summary of SR 2010-039 (Suitability Rule Proposal)

1. **Comment Letter:** Strongly urge FINRA to reconsider any reference to non-securities in the proposed rules (redundant regulation).

Revised Rule Proposal: Explicit language not in proposed rule which states "A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities ..."

FINRA Comment: With the possible exception of potentially duplicative regulation, which FINRA believes could be addressed in any further expansion of the reach of the rule, FINRA does not agree with the commenters' reasoning against extending the scope of the suitability rule. FINRA acknowledges, however, that future developments in regulatory restructuring could impact any such proposal. FINRA emphasizes, moreover, that the proposed new suitability rule (including the explicit coverage of recommended strategies and expanded list of the types of information that members must seek to gather and analyze) and the proposed "Know Your Customer" rule together provide enhanced protection to investors. Consequently, FINRA will not include explicit references to non-securities products in the rule at this time.

2. **Comment Letter:** Existing "Know Your Customer" Rule 2010 adequate – further guidance should be appended (no additional rule 2090).

Revised Rule Proposal: FINRA still proposing Rule 2090.

3. **Comment Letter:** Documentation of info gathered – Is the info found on the new N/A adequate to meet the proposed requirements?

Revised Rule Proposal: Provided further guidance in Supplementary Material guidance (beyond customer's financial profile and investment objectives or policy): (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.

FINRA Comment: FINRA deems this "less prescriptive."

4. **Comment Letter:** Object to requirement that an institutional customer affirmatively foregoes the customer-specific suitability requirement - Institutional customer may be unwilling to affirmatively waive this requirement – 2 or the 3 factors are adequate.

Revised Rule Proposal: Revised exemption eliminates the requirement that institutional customers affirmatively indicate that they are giving up suitability protections. Instead, it requires institutional customers to affirmatively indicate they are exercising independent judgment - Focus on the 2 main conditions.

FINRA Comment: FINRA has modified the proposed exemption in a way that should alleviate commenters' concerns while providing the necessary protection to institutional customers.

5. **Comment Letter:** Standard of institutional customer exemption should be 10 million, not 50 million.

Revised Proposed Rule: Continues to reference Rule 3110(c)(4) which has the 50 million thresholds.

FINRA Comment: While any standard is imperfect, FINRA believes that it is important to use the definition in Rule 3110(c)(4) for consistency and because of its higher monetary threshold.