



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS.

Kristen Malinconico
DIRECTOR

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5636
kmalinconico@uschamber.com

April 15, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Proposed Rule Change to FINRA’s Suitability, Non-Cash Compensation and Capital Acquisition Broker Rules in Response to Regulation Best Interest (File Number SR-FINRA-2020-007)

Dear Secretary Countryman:

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) proposal (“Proposal”)¹ to change its suitability, non-cash compensation, and Capital Acquisition Broker (“CAB”) rules in response to Regulation Best Interest (“Reg BI”).

CCMC strongly supports the Security and Exchange Commission’s (“SEC”) Reg BI, adopted on June 5, 2019. Reg BI sets a strong, consistent national standard that prohibits broker-dealers from placing their own interests ahead of their clients’ interests.² CCMC believes that Reg BI strikes an appropriate balance between consumer protection and investor choice. As we previously commented to the SEC, we believe that Reg BI preserves investor access to various types of advice and investment products, improves investors’ understanding of their choices, and protects investors from bad actors.³

¹ Release No. 34-88422; File No. SR-FINRA-2020-007

<https://www.sec.gov/rules/sro/finra/2020/34-88422.pdf>

² Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 FR 33318 (July 12, 2019).

³ See Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, May 16, 2019, available at <https://www.sec.gov/comments/s7-07-18/s70718-5528937-185232.pdf>

Similar to Reg BI, FINRA's suitability rules are intended to set a high standard of professional conduct and ethical sales practices in broker-dealers' relationships with retail customers. FINRA's Rule 2111 requires that a broker-dealer "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer" based on a customer's investment profile.⁴

Unlike the suitability rule, Reg BI requires a consideration of costs and emphasizes the deliberation by a broker-dealer of reasonably available alternatives. In addition to such enhancements, Reg BI explicitly requires broker-dealers to act in the best interest of customers. Altogether, Reg BI enhances the "standard of conduct beyond existing suitability obligations."⁵ We commend FINRA for addressing, in advance of the full implementation of Reg BI on June 30, 2020, inconsistencies and conflicts between its suitability rules and the higher standard of care in Reg BI.

This Proposal successfully addresses the following concerns:

(1) Conforming FINRA's Suitability Rules (Rule 2111 and CAB Rule 211)

Notably, without conforming its rules to Reg BI, a broker-dealer would be required to comply with both the SEC's Reg BI and FINRA's suitability rules for recommendations to retail customers. Through its proposed modifications to Rules 2111 and CAB Rule 211, broker-dealers that are subject to Reg BI would not be required to also comply with the suitability rules when making recommendations to retail customers. However, FINRA's suitability rules would continue to apply to recommendations to institutional investors and to other clients that are not retail customers. We commend FINRA for this important clarification that would eliminate confusion over when Reg BI or the suitability rules would apply.

(2) Conforming FINRA's Non-cash Compensation Rules (Rules 2310 and 5110) and Eliminating Rules 2320 and 2341

FINRA's current rules allow certain non-cash compensation arrangements limited to gifts, business entertainment, training and education meetings, and

⁴ FINRA Rule 2111 <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111>

⁵ SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals, *available at* <https://www.sec.gov/news/press-release/2019-89>

sales contests based on total production of associated persons with respect to all securities within the rule's product category.⁶ We agree with FINRA's goal of making its non-cash compensation rules consistent with Reg BI's Conflicts of Interest Obligation, which "requires broker-dealers to establish, maintain, and enforce written policies and procedures designed to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on specific securities or specific types of securities within a limited time period."⁷ Under FINRA's modified non-cash compensation rules, which eliminate Rules 2320 and 2341 focused on total production and equal weighting of securities sales, firms will no longer be allowed to offer non-cash compensation in the form of gifts, business entertainment, training and education meetings, or sales contests based on specific securities.

Conclusion

We commend FINRA for proposing changes to its suitability and non-cash compensation rules to align them with Reg BI. We encourage the SEC to approve this Proposal because it brings important clarity and consistency to the standards governing broker-dealers' relationships with retail customers.

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,



Kristen Malinconico

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee

⁶ Release No. 34-88422; File No. SR-FINRA-2020-007 at page 7

⁷ Release No. 34-88422; File No. SR-FINRA-2020-007 at page 8.