

Securities Arbitration

Rule 10b-5, Suitability, & Know Your Customer

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The Securities Acts

Government's statutory reaction to the Great Depression

1933

- The "Securities Act"
 - To ensure buyers of securities have adequate information (disclosure) before they invest

1934

- The "Exchange Act"
 - Established the SEC to administer federal securities laws
 - The SEC investigates violations of the securities laws and can seek monetary penalties from violators

Rule 10(b) — The Quintessential Antifraud Provision

Rule 10b-5 makes it unlawful:

To employ any device, scheme, or artifice to defraud.

To make any untrue statement of material fact or to omit to state a material fact.

To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Suitability

FINRA Rule 2111 – Effective July 9, 2012

Rule 2111 treats the investor as an individual:

Which type of investment is “suitable” for this investor?

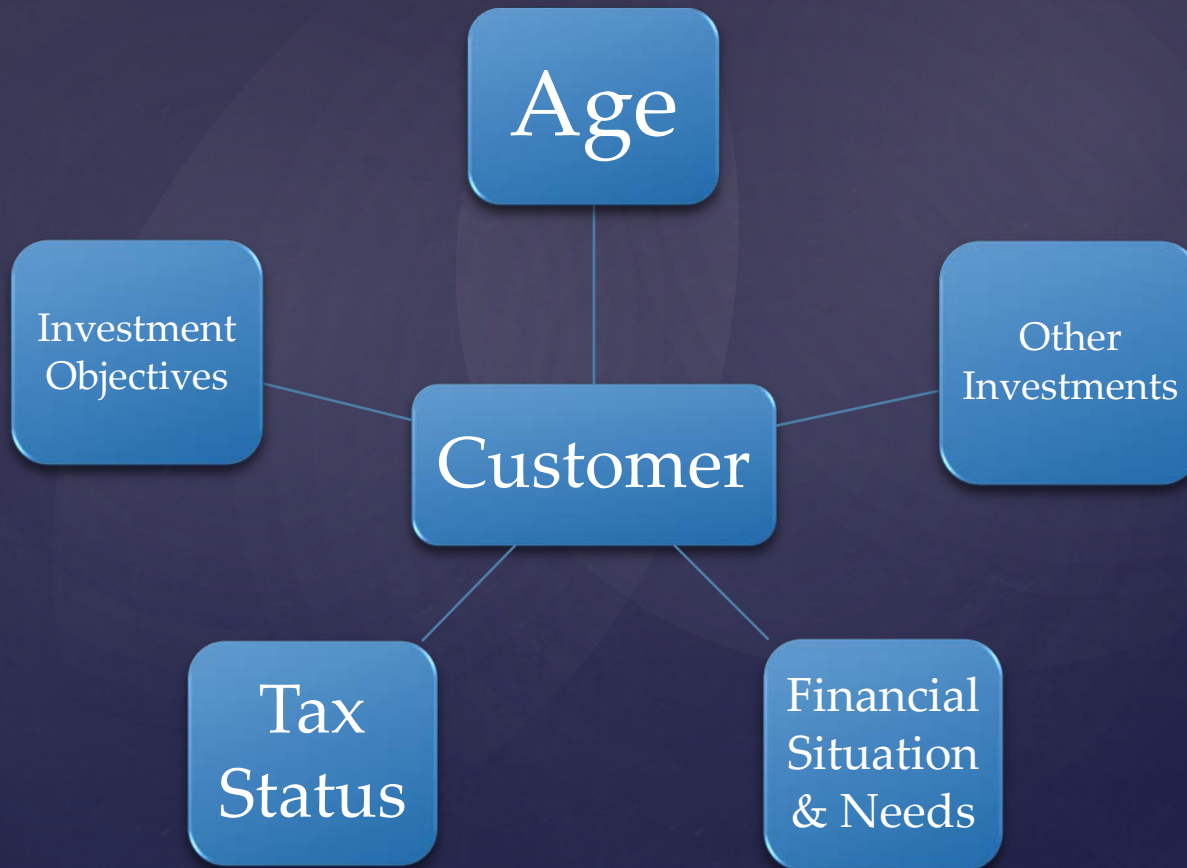


2111. Suitability

Effective July 9, 2012

(a) 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 is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to,

2111. Suitability



2111. Suitability



FINRA Rule 2090

Know Your Customer

⌘ Requires firms to:

⌘ use “reasonable diligence” in regard to the opening and maintenance of every account

⌘ To know the “essential facts” concerning every customer

⌘ “Essential facts” are those required to

⌘ (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

⌘ (d) comply with applicable laws, regulations, and rules

Citations

- ⌘ Anthony M. Sabino & Michael A. Sabino, “From *Chiarella* to *Cuban*: The Continuing Evolution of the Law of Insider Trading,” 16 Fordham Journal of Corporate and Financial Law 673 (2011).
- ⌘ FINRA Rule 2090 – Know Your Customer www.finra.org/web/groups/industry/@notice/documents/notices/p122778.pdf
- ⌘ FINRA Rule 2111 – Suitability <http://www.wnj.com/Publications/New-FINRA-Rules-on-Knowing-Your-Customer-and->
- ⌘ Securities Act of 1933
- ⌘ Securities Exchange Act of 1934