



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

July 13, 2015

Marcia E. Asquith  
Secretary  
Financial Industry Regulatory Authority  
1701 K St N.W.  
Washington, D.C. 20005

Re: Regulatory Notice 15-19 – Recruitment Practices

Dear Ms. Asquith:

On May 27, 2015, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on proposed rules to require the delivery of a FINRA-created educational communication to clients of advisors who have transferred to a new broker-dealer and whose clients are considering moving their accounts to the advisor's new firm.<sup>1</sup> The proposed educational communication contains questions investors may want to ask their financial advisor including: costs the client may incur, non-transferability of assets, conflicts of interest, changes in level of service, and product availability.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI commends FINRA for listening and responding to input and making considerable changes from its previous proposals.<sup>3</sup> Nevertheless, FSI believes operational and supervisory challenges remain in the proposal. FSI recommends that FINRA clarify the delivery standard, implement minor changes to alleviate supervisory challenges and consider financial advisors whose current firm is acquired by another. Our concerns and suggestions are outlined in our comments below.

### **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

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<sup>1</sup> FINRA Regulatory Notice 15-19, available at, [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Note\\_15-19.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf)

<sup>2</sup> The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

<sup>3</sup> See, FINRA Regulatory Notice 13-02, available at, <http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf>. See also, Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243, available at, <https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf>

producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

## **Discussion**

FSI appreciates the opportunity to comment and applauds FINRA for its proposal. FSI supports FINRA's goal of increasing transparency for investors. However, FSI believes there are several operational and supervisory challenges with this proposal. These concerns and suggestions are discussed in greater detail below.

### **I. FSI Commends FINRA for Listening to the Industry's Concerns, but Operational and Supervisory Challenges Remain**

#### **A. Introduction and FSI's Previous Comments**

FSI appreciates and commends FINRA for listening to the industry's input and incorporating it into its current rule proposal. FINRA originally sought comment on its recruitment compensation rule in January 2013.<sup>4</sup> In its original request for comment, FINRA would have required that broker-dealers notify their clients of the exact compensation package in excess of \$50,000.<sup>5</sup> In our comments, FSI stated that we support full transparency for investors. However, FSI raised several concerns, including financial privacy and the arbitrariness of the \$50,000 threshold, as reasons why FINRA should improve the rule as proposed.<sup>6</sup>

In March 2014, FINRA filed with the SEC a proposed rule change to adopt FINRA Rule 2243. In this amended rule filing, FINRA proposed that broker-dealers disclose recruitment compensation in excess of \$100,000, and only in specific, predetermined ranges.<sup>7</sup> In its comments, FSI applauded FINRA for raising the threshold limit, but also raised concerns about potential violations of non-solicitation agreements and requested FINRA conduct a thorough cost-benefit analysis of the rule.<sup>8</sup>

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<sup>4</sup> FINRA Regulatory Notice 13-02, available at, <http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf>

<sup>5</sup> See, *Id.*

<sup>6</sup> FSI's Comment Letter on Regulatory Notice 13-02, available at, <http://www.finra.org/sites/default/files/NoticeComment/p220105.pdf>

<sup>7</sup> Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243, available at, <https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf>

<sup>8</sup> FSI's Comments on SR-FINRA-2014-010, available at, <http://www.sec.gov/comments/sr-finra-2014-010/finra2014010-33.pdf>

## B. Current Proposal

FINRA's current proposal would require that a broker-dealer provide a client FINRA-created educational materials shortly after their financial advisor first attempts to induce a client to transfer their assets.<sup>9</sup> FINRA's intent is that the educational material will prompt a client to ask their financial advisor questions involving the transfer of their account, such as the costs involved and any changes in the level of service.<sup>10</sup>

FSI applauds FINRA for listening to the comments of FSI And others about the operational and competitive challenges inherent in its previous proposals. FSI believes the current proposal is more effective in providing guidance enabling clients to ask the appropriate questions to their advisors when determining whether to transfer their assets. The content of the educational communication is clear and achieves of the goal of prompting the conversation. FSI applauds and supports FINRA's goal of transparency for investors when they decide whether or not to transfer their account to a new firm. FSI therefore offers our support for the proposal.

Nevertheless, FSI believes there are still operational and supervisory challenges enmeshed in the current proposal. We discuss our concerns below and provide suggestions on ways to address them.

## C. The Proposal Would Benefit from Clarification of the Delivery Requirement to Overcome Operational and Supervisory Challenges

In its proposal, FINRA would require that the educational communication be provided "shortly after the time of first contact with a client regarding the transfer of assets to the recruiting firm."<sup>11</sup> Further, FINRA's proposal has different delivery standards depending on whether the communication was oral, in writing, or electronic. If the communication is in writing or electronic, the educational communication must be attached to it, either physically or through hyperlink. If the communication is oral, the recruiting broker-dealer must provide the educational material within three business days.<sup>12</sup> Further, this delivery requirement would apply for six months following the financial advisor's effective date with the new firm.<sup>13</sup>

FSI believes that FINRA's current proposal leaves considerable room for confusion and interpretation and we believe FINRA should clarify the standard. The standard is vague and will lead to confusion as to what constitutes a first contact to induce a client to move their account. For example, a financial advisor may share a social relationship with a client, and mention to the client within a social context that they are transferring to a new firm. This type of situation may lead to confusion as to whether the communication would trigger the requirement to deliver the educational communication. Further, if a broker-dealer were to distribute a general announcement that an advisor is transferring to their firm, there may be confusion as to whether this triggers the requirement to deliver of the educational communication.

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<sup>9</sup> FINRA Regulatory Notice 15-19, available at, [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Note\\_15-19.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf)

<sup>10</sup> See, Id.

<sup>11</sup> See, Id.

<sup>12</sup> See, Id.

<sup>13</sup> See, Id.

From an operational perspective, delivering any type of required notice to clients that includes very specific timing constraints, can be more effectively implemented by the back-office of the broker-dealer rather than relying on the financial advisor. Suggesting this responsibility be left to the financial advisor is fraught with potential supervisory concerns. In its notice FINRA states that firms may adopt procedures to ensure compliance with the delivery requirement such as training and spot checks.<sup>14</sup> However, from a supervisory framework standpoint firms may not be confident that these types of measures ensure compliance with the delivery requirement.

FSI suggests alternative standards that FINRA can propose to provide clarity on this standard. FINRA could require that the educational communication be delivered to investors at the time they are given ACAT or transfer account documents. An additional benefit of this requirement would be the ability for clients to discuss the costs and considerations involved with transferring their account to a new broker-dealer. This more definitive standard also removes any subjective determination by a broker-dealer as to what constitutes a first contact to induce a client. Finally, this proposed alternative ensures that each client is provided the educational communication in an identical manner, providing consistent transparency and allowing investors to ask their financial advisor the pertinent questions outlined in the communication. If FINRA believes this is too late in the process, then perhaps the requirement could be altered to require the communication prior to providing a client with an ACAT transfer form. In other words, firms cannot provide clients with transfer paperwork until the proposed piece has been provided and the customer has had sufficient time to review it (i.e. two or three business days).

We would also suggest that if the broker-dealer is able to provide this educational communication as part of their transfer process, it may realistically be provided to all new clients, not just those transferring to the firm within the first six months of the financial advisor joining the firm. This would have the effect of achieving far reaching awareness of the issues clients should consider anytime they transfer their accounts, regardless of whether it's motivated by the client themselves, or if they are choosing to follow a financial advisor who is moving to a new firm.

#### D. The Proposal Should Address Advisors Whose Firms are Acquired

FINRA's rule is intended to educate clients on the issues and potential costs involved with switching firms along with their financial advisor. FINRA is especially concerned with transparency around transferring advisors who are to receive additional recruitment compensation or bonuses. Nevertheless, FINRA is silent on the issue as to what should occur when a financial advisor changes broker-dealers because his or her firm is acquired, and its associated persons are absorbed by another broker-dealer; or because he or she is employed by or associated with a financial institution that transfers its networking arrangement to a new broker-dealer. We recommend that FINRA consider whether instances such as acquisition would trigger delivery of the educational communication and provide firms additional guidance.

FSI suggests that FINRA consider clarifying whether the educational communication must only be provided when a financial advisor voluntarily transfers to another broker-dealer or any time there is a transfer, regardless of the circumstances.

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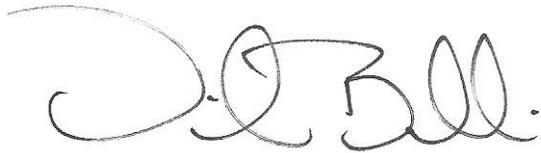
<sup>14</sup> FINRA Regulatory Notice 15-19, available at, [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Note\\_15-19.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf)

**Conclusion**

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.  
Executive Vice President & General Counsel