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Compliance

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March 5, 2013

Via E-mail to pubcom@finra.org

Marcia E. Asquith,
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 13-02 -- Request for Comment on Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices.

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA” or “the Firm”) appreciates the opportunity to provide this letter in response to Financial Industry Regulatory Authority (“FINRA”) Regulatory Notice 13-02, which proposes a rule to require specific disclosure by FINRA member firms of financial incentives a recruited representative will receive as part of a recruited representative’s relationship with the new firm (the “Proposed Rule”). The Proposed Rule would require such disclosures be provided to a former retail customer of the recruited representative prior to a client’s “final determination to transfer an account to the new firm.”¹ WFA recognizes that many factors may influence a financial advisor to leave one firm and join another and currently advises clients of the potential conflict of interest from compensation paid in connection with transfer of firms. WFA writes in support of the Proposed Rule and to offer recommendations to strengthen the effectiveness of a final rule.

¹ FINRA Regulatory Notice 13-02, Request for Comment on Rule to Require Disclosure of Recruitment Compensation, 1, <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p197599.pdf>,

WFA consists of brokerage operations that administer approximately \$1.2 trillion in client assets. It employs approximately 15,170 full-service financial advisors in 1,100 branch offices in all 50 states and 3,216 licensed financial specialists in 6,610 retail bank branches in 39 states.²

WFA shares FINRA's belief "that customers would benefit from being told of potential material conflicts arising from a registered person being paid recruiting incentives to change firms" and generally supports the Proposed Rule.³ When such a change of association occurs, former clients should be provided with all the material information upon which to make an informed decision regarding the continued servicing of their accounts, including potential "material conflicts arising from a registered person being paid recruiting incentives to change firms."⁴ WFA believes that meaningful disclosure of this potential conflict includes informing a recruited representative's former clients of the specific "enhanced" compensation the representative is eligible to receive when affiliating with a new firm. Furthermore, WFA believes that the final rule should make clear that the details to be disclosed include a description of the specific forms of enhanced compensation such as "signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance, and similar arrangements."⁵

To facilitate FINRA's objective of assuring that clients receive material information about recruitment compensation, WFA believes that FINRA should mandate the use of a consistent industry template for written disclosures of the "enhanced compensation" a representative is eligible to receive including the specific dollar amount of compensation that may be received, the general terms by which the representative will qualify to receive the compensation and the period over which such compensation may be earned.

While supportive of the Proposed Rule, WFA believes a final rule can be strengthened to ameliorate the potential for unequal treatment of broker-dealers and registered investment advisers ("RIAs"); facilitate efficient and verifiable compliance; and assure that former firms disclose conflicts relating to their efforts to retain former customers. WFA discusses each of these recommendations in more detail below.

I. FINRA should act in concert with the Securities and Exchange Commission and state agencies to assure customers of RIAs receive comparable recruitment compensation disclosures.

FINRA's proposed requirement to disclose recruitment compensation applies to member firms that provide "a registered person enhanced compensation in connection with transfer to the

² WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 92 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

³ FINRA Request for Comment on Rule to Require Disclosure of Recruitment Compensation, 4.

⁴ *Id.*

⁵ Proposed Enhanced Compensation Rule Text, <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/industry/p197601.pdf>.

recruiting member.... from another financial services industry firm.”⁶ According to the Proposed Rule, the financial services industry includes industries regulated by the Securities and Exchange Commission (“SEC”) and “state securities authorities” among others.⁷

Under this definition, in addition to disclosing payments to recruit a representative from another member firm, a recruiting member will be required to disclose recruitment compensation to representatives recruited from a non-member RIA. A non-member RIA that pays recruitment compensation to a registered representative from a FINRA member firm to induce the representative to associate with the non-member RIA, however, would not be subject to FINRA’s Proposed Rule.

As a consequence, a registered representative considering recruitment compensation offers from both a FINRA member firm and a non-member RIA could avoid disclosure by associating with the RIA. The Proposed Rule may therefore incentivize representatives who are considering leaving their current firm to favor employment with RIAs which are not subject to FINRA oversight. Moreover, the Proposed Rule’s application only to FINRA members would mean former customers of recruited representatives that associate with non-member RIAs may not receive appropriate disclosures of conflicts of interest, undermining FINRA’s purpose of providing former customers notice of enhanced compensation. Accordingly, WFA respectfully requests that FINRA work in concert with the SEC and the states to assure that RIAs are subject to substantially similar disclosure requirements.

II. The final rule should enable efficient and verifiable compliance.

To assure that customers are aware of potential conflicts prior to transferring their account, FINRA’s Proposed Rule would require recruiting firms to make enhanced compensation disclosures at the “first individualized contact” with a former customer.⁸ WFA believes disclosure at the time of “first individualized contact” is problematic to supervise, unnecessarily cumbersome and could lead to delayed client service. WFA submits FINRA’s objective of informing former customers of recruitment compensation prior to their decision to transfer can be more efficiently met and more reasonably supervised by requiring the inclusion of prominent, plain English written disclosures with transfer paperwork.

Due to the difficulty of documenting proper oral disclosures, the “first individualized contact” requirement would be difficult to supervise and could lead to disagreements about members’ compliance with the rule. Regulatory disclosures are traditionally delivered in a written format to permit verifiable evidence of compliance that eliminates ambiguity as to the information provided.

Accordingly, WFA believes that the final rule should require recruiting firms to provide clear and prominent written disclosures that accompany or precede account transfer paperwork for former customers of the recruited representative. In addition, a final rule should elucidate the

⁶ *Id.*

⁷ *Id.*

⁸ FINRA Request for Comment on Rule to Require Disclosure of Recruitment Compensation, 4.

Proposed Rule's requirement of a "clear and prominent" disclosure of the "details of the enhanced compensation" by mandating the use of a FINRA-provided disclosure template as outlined above.

These revisions would balance FINRA's purpose of providing disclosures prior to a customer's transfer with members' interest in efficient compliance and effective customer service.

In addition, WFA believes the written disclosures should be provided for a period of one-year from the recruited representative's date of association with the recruiting firm rather than for a potentially longer period of time.⁹

Finally, WFA urges FINRA not to adopt provisions requiring the recruiting firm to disclose the prospect of enhanced compensation that the registered person may receive after associating with the recruiting firm, while the registered person is still associated with the prior firm.¹⁰ It would, among other things, be impracticable for recruiting firms to design supervisory systems covering the activity of a representative still associated with the prior firm. Moreover, such a requirement is not necessary to achieve FINRA's objective of assuring that former customers receive disclosures prior to the customer's transfer.

III. A final rule should require former firms to disclose conflicts relating to the retention of the account of a former customer of a recruited representative.

Although FINRA's proposal is designed to "provide transparency to customers at the previous firm," the Proposed Rule does not impose any conditions on the conduct of the former firm.¹¹ Consequently, WFA is concerned that compliance with the Proposed Rule may unintentionally put recruiting firms at a competitive disadvantage.

Former firms may offer their registered representatives financial incentives to retain the accounts of a recruited representative's former clients. The Proposed Rule, however, does not require former firms to disclose conflicts when the former firm offers such incentives. WFA is concerned that the Proposed Rule may unintentionally imply that incentives that accompany a representative's movement from one firm to another pose greater risk of conflicts of interest than financial incentives relating to the retention of customer accounts. Such a scenario would undermine FINRA's objective of informing clients of the potential for conflicts of interest that may influence the financial advice they receive.

In light of these concerns, WFA respectfully asks FINRA to assure that the final rule outlines the fair dealing obligations of former firms when communicating with former clients of a recruited representative.

⁹ *Id.* at 5.

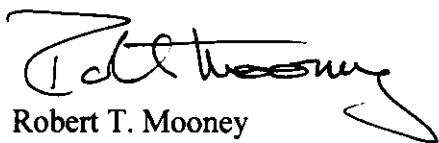
¹⁰ *Id.*

¹¹ *Id.* at 4.

Conclusion

WFA reiterates its support for FINRA's objective of assuring that former customers receive notice of the "material conflicts arising from a registered person being paid recruiting incentives to change firms" and appreciates the opportunity to provide the foregoing comments to help strengthen a final enhanced disclosure rule.¹² Please feel free to contact me with any questions or comments.

Sincerely,



Robert T. Mooney
Chief Compliance Officer
Retail Brokerage - Wells Fargo Advisors

¹² *Id.*