RAYMOND JAMES®

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VIA ELECTRONIC MAIL (pubcom@finra.org)

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of Educational Communication to Clients of a Transferring Representative

Dear Ms. Asquith:

Raymond James Financial Services, Inc. ("**RJFS**") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("**FINRA**") proposed rule, as delineated in Regulatory Notice 15-19, which would require delivery of a FINRA-created educational brochure to clients of a registered representative transferring to another member firm (the "**Proposal**").[1]

I. Introduction

RJFS is one of the leading diversified financial services companies in the U.S., associating with 3,422 financial professionals in 2,100 branch and satellite offices throughout the U.S. RJFS registered financial advisors generally provide holistic wealth management advice, including college, retirement, charitable giving, and estate planning to their retail clients. RJFS also provides advisory services for banks and credit unions, as well as their clients. As of March 30, 2015, RJFS had $216 billion in assets under administration and excess net capital of $24 million.

II. Summary of the Proposal

RJFS appreciates FINRA's interest in its members' consideration of the Proposal. The Proposal would require a member firm that recruits a registered representative to provide an educational communication to the representative's former retail clients when:

(1) The member, directly or through the transferring representative, attempts to induce the former retail clients to transfer assets to the recruiting firm; or

(2) The former client, without inducement, transfers his or her assets to an account assigned, or to be assigned, to the transferring representative.

[1] Regulatory Notice 15-19, FINRA, May 2015, *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf.

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Raymond James Financial Services, Inc., member FINRA/SIPC

FINRA has drafted the proposed educational document, which is included in Regulatory Notice 15-19. The document would highlight the potential implications of transferring assets to the recruiting firm and suggest questions clients may want to ask regarding:

(1) Financial incentives received by the registered representative that may create a conflict of interest;

(2) Potential costs related to transferring assets to the recruiting firm; and

(3) Differences in products and services offered between the client's current firm and the recruiting firm.

The member firm would need to provide the educational communication either at the first time of contact with the former client, or shortly thereafter, depending on the form of contact.

(1) Written Contact: the educational document must accompany the written communication.

(2) Electronic Contact: the recruiting firm may hyperlink directly to the educational communication.

(3) Oral Contact: the recruiting firm must send the educational document to the client within three (3) business days or with any other communication sent by the recruiting firm to the former client in connection with a potential transfer of assets. The recruiting firm or representative must inform the former client that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm.

The recruiting firm or representative must deliver the educational document to any former client who seeks to transfer assets to an account assigned, or to be assigned, to the representative at the recruiting firm even absent contact from the recruiting firm or transferring representative. The recruiting firm must include the educational document with the account transfer approval documentation.

The requirement to provide the educational document would continue to apply for six (6) months following the date that the registered representative associates with the recruiting firm.

FINRA indicates that it expects firms to implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures.

III. RJFS' Comments on the Proposal

A. RJFS Supports FINRA's Goal of Transparency for Investors

RJFS supports FINRA's goal of providing retail clients with relevant information to make informed decisions in transferring their assets to their former advisor registered with a new firm. RJFS strides to provide a transparent environment where clients receive plain-English disclosures to help them better understand their investment choices, services, and related prices. Therefore, RJFS understands the importance of choosing a financial advisor and firm wisely and encourages clients to regularly engage in conversation with their advisors. RJFS applauds FINRA's efforts to educate retail clients, as well as FINRA's clear intention to provide such investors with material and timely information.

B. The Proposal Does Not Advance FINRA's Goals

While RJFS supports FINRA's goal to provide transparency to investors, the Proposal does not advance FINRA's goal. Rather, the Proposal and the questions it suggests investors raise prompt discussions that are either: (a) immaterial to a client's decision to transfer assets; or (b) require transferring representatives to access clients' account information at the prior firm, which may place the transferring representative and the recruiting firm in violation of federal securities laws or in breach of privacy agreements.

RJFS addresses the Proposal below:

1. Questions about financial incentives

As drafted, the FINRA educational brochure encourages the disclosure of advisors' private financial information with limited value to clients. A financial advisor's decision and primary motivation to transfer firms is frequently unrelated to compensation. As with any personal career decision, moving one's business involves a multitude of factors, including but not limited to geography, management responsiveness, service levels, desire for independent business ownership, and potential career opportunities. These personal factors, along with an advisor's current or future compensation, are generally unrelated to clients' considerations of maintaining a professional business relationship with their advisors.

Additionally, RJFS's advisors are already highly regulated by their own firm, FINRA, the states in which they do business, and often by the U.S. Securities and Exchange Commission and others. As such, they are primarily incentivized to act in compliance with a multitude of regulations and work with regulators. Advisors' personal career choices and firm affiliation decisions typically do not influence the advice provided to their clients. Therefore, questions about financial incentives would lead many former clients to unfairly suspect their advisor's motivation based strictly on the advisor's compensation package. Changes in an advisor's compensation due to transferring firms do not necessarily create a conflict of interest between the advisor and his or her client. Rather, an advisor's primary goal is to meet the investment and financial needs of their clients, regardless of compensation. Therefore, RJFS believes its financial advisors should not be forced to provide such personal financial information to simply continue a client relationship.

2. Questions about the ability to transfer assets, costs of transfer, and product comparisons between the old and new firms

To properly evaluate the actual cost to a client in moving their investable assets to a successor firm, a financial advisor would need actual transparency into the client's former investment portfolio. However, a transferring advisor would generally not have access to the detailed account information of his or her former clients. Pursuant to Regulation S-P, a departing representative may not share his or her former clients' account information to the recruiting firm unless several specific criteria are met.[2] The recruiting firm would not have access to whether such third-party information sharing had been approved by any such clients; in fact, the recruiting firm must separately comply with the notice requirements.[3]

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[2] *See* Regulation S-P § 248.10(a)(1) (prohibiting disclosure absent client's failure to opt out within a reasonable timeframe). Some states require opt-in notices. *See, e.g.*, 950 CMR 12.205(9)(c)(13) (in Massachusetts, deeming it dishonest and unethical to "disclos[e] the identity, affairs, or investments of any client to any third party . . . unless consented to by the client").

[3] *See* Regulation S-P § 248.10(b) (mandating compliance regardless of whether the firm and the former client "have an established business relationship").

In addition, while FINRA members may have signed private agreements outlining the specific client information advisors may retain when transferring between signatory firms, advisors switching between non-party firms may still be exposed to possible litigation. For example, the Protocol for Broker Recruiting (the "**Protocol**") allows transferring advisors and their recruiting firms to take a limited amount of client contact information, subject to the Protocol's outlined procedures.[4] However, the Protocol and other inter-firm private agreements do not protect transferring advisors or the recruiting firms if either the former or the recruiting firm is not a signatory. Furthermore, a transferring advisor may have signed non-compete or non-solicit agreements with his or her former firm, barring the advisor from delivering former client data to the recruiting firm or maintaining such data necessary to engage in the specific cost and product comparison conversations FINRA wants to see occur pursuant to the Proposal.

Without the former client's account information, a transferring representative would lack the necessary information to properly evaluate a client's portfolio for differences in product offerings and transfer costs. Improperly accessing such information from the former firm could trigger violations of Regulation S-P and private agreements, resulting in potential litigation for the transferring advisor and the recruiting firm. Therefore, FINRA's intent, while genuine, could unintentionally place firms at odds with other established regulations and agreements.

C. The Proposal Places Significant Challenges on Supervision

1. Three-Day Notice Requirement

RJFS also believes the Proposal fails to acknowledge the difficulty of creating effective supervisory and operational procedures to ensure compliance. RJFS is primarily concerned with the challenge of supervising compliance with the Proposal's three-day notification period for delivering an educational communication after oral contact with former clients. Unfortunately, the Proposal does not provide clarity as to exactly when an oral conversation between a transferring representative and a former client becomes an attempt to induce the transfer of assets. Furthermore, conversations subject to the proposed rule may occur prior to the representative joining the member firm – particularly in the instances of independent representatives transitioning to another independent broker-dealer. Because of the difficulty in determining when the exact date of inducement occurred, RJFS is concerned that implementing a systematic and consistent method to supervise compliance with the three-day period is impossible.

The three-day notification process also presents operational challenges to member firms. A recruiting firm would have to rely on a transferring advisor's immediate reporting of oral communications with his or her former clients before sending the educational brochure. Moreover, large firms, like RJFS, attracting a significant number of transferring advisors would need to send a sizeable number of brochures in only three days. Ultimately, the three-day window would create operational complexities and inefficiencies that FINRA should consider alongside the benefits of investor education and transparency.

Given the problems with effectively conducting and supervising delivery, RJFS agrees with the Securities Industry and Financial Markets Association ("**SIFMA**") and the Financial Services Institute ("**FSI**") in the comment letters they have filed with FINRA regarding the Proposal and recommends that the rule require delivery to the client with the account transfer documentation. Aligning the delivery of the brochure with the transfer process would resolve any ambiguity regarding the exact timing of a transferring representative's oral contact with a former client. Also, the former client would still have the opportunity to ask any and all questions prompted by the brochure prior to opening the account.

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[4] Protocol for Broker Recruiting, Bressler, Amery & Ross P.C., 2004, *available at* http://www.bressler.com/broker-protocol.

2. Six-Month Application of Rule

RJFS is also concerned that the delivery requirement extends for six months after the financial advisor's transfer date, while the majority of a transferring advisor's solicitations would typically occur shortly after they transfer firms to avoid the risk of losing the client. The extended supervisory timeframe proposed by FINRA increases supervisory responsibility with immaterial benefit to clients. Therefore, RJFS agrees with SIFMA that the delivery requirement should only last for 90 days after the advisor's transfer date.

Additionally, pursuant to the Proposal, recruiting firms would have to confirm the delivery of brochures to the former firm's clients. Without any way to monitor communication with such clients, the new firm would have to directly communicate with the former firm's clients to verify compliance. As previously mentioned, such communication may raise privacy concerns under Regulation S-P or may violate private agreements. At worst, the recruiting firm's communication may result in costly litigation with the former firm.

D. The Proposal Imposes Significant Compliance Costs on Member Firms

Even if an effective supervisory procedure existed, the training, implementation, and maintenance of such supervisory controls would present considerable costs for member firms. To ensure that former clients are receiving FINRA's educational communication, RJFS would have to undertake the training of financial advisors, compliance employees, and supervisory professionals. Implementing such new supervisory requirements could necessitate adding staff to monitor required activity and could increase required technology and systems, increasing the cost of supervision and compliance.

Although FINRA has provided an alternative electronic delivery option, compliance with the rule would still require the physical delivery of brochures to clients who have not provided electronic contact information. The costs of mailing brochures to these clients include production and delivery expenses, as well as the addition or update of systems to supervise and support delivery.

E. The Proposal Disparately Impacts Larger Firms

Furthermore, the Proposal may have a disparate negative impact on larger firms attracting advisors with a significant number of clients. Firms recruiting advisors with substantial books of business would inherently require the delivery of a greater number of brochures to satisfy the Proposal's delivery rule. As a result, monitoring delivery of such brochures in a timely manner may prove costly for larger firms. As RJFS attracts a significant number of talented, successful financial advisors from competing firms, RJFS opposes any rule that places a disproportionate amount of costs on larger firms without significant benefits for retail clients.

IV. Conclusion

While RJFS supports FINRA's goal to empower clients to make informed decisions about selecting their financial advisor and firm, RJFS believes the requirements associated with the proposed rule create significant supervisory challenges and incremental costs – especially with respect to the three day brochure delivery requirement. Therefore, while RJFS recognizes FINRA has the best intentions with this Proposal, the unintended consequences are significant and RJFS respectfully requests FINRA's reconsideration.

Sincerely yours,

Scott Curtis
President
Raymond James Financial Services, Inc.