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Member FINRA/SIPC

July 13, 2015

Via E-mail: *pubcom@finra.org*

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

RE: Regulatory Notice 15-19: Recruitment Practices – FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative, set forth in Regulatory Notice 15-19 (the “Proposal”).¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in 6,610 retail bank branches across the United States.² WFA is a non-bank affiliate of Wells

¹ Regulatory Notice 15-19, Recruitment Practices – FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (May 2015). http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf

² Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

Fargo & Company, whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. PRIOR PROPOSAL

In March of 2014, FINRA filed a proposal³ with the SEC containing two components: (1) a disclosure obligation to former retail customers who the recruiting firm attempts to induce to follow a transferring registered representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation.

The disclosure obligation in the initial proposal would have required a member recruiting firm to disclose to former customers ranges of recruitment compensation that the representative has received or will receive in connection with moving firms and the basis for that compensation. It would have also required disclosure if a former customer would incur costs to transfer assets to the member firm that would not be reimbursed and if any of the former customer's assets were not transferable to the recruiting firm. Lastly, this proposal would have required disclosure for up to one year following the date the registered representative began employment or associated with the recruiting firm.

While we generally supported the 2014 proposal, we joined many in the industry in expressing concerns about the proposal's competitive implications and operational aspects, as well as the effectiveness of the proposed compensation disclosures. Subsequently, in June 2014, FINRA withdrew the proposal.

II. CURRENT PROPOSAL

Under this revised Proposal, “[a] member that hires or associates with a registered representative shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, attempts to induce the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent inducement, transfers assets to an account assigned, or to be assigned, to the registered person at the member.”⁴

The Proposal outlines the timing for the delivery of the educational communication, requiring that the member deliver the communication “at the time of first individualized contact with a former customer by the registered person or the member that attempts to induce

³ FINRA File No. SR-FINRA-2014-010 – Proposed Rule Change to Adopt FINRA Rule 2243 - Disclosures and Reporting Obligations Related to Recruitment Practices

⁴ Proposed Rule 2272(a)

the former customer to transfer assets to the member.”⁵ Further, the timing of the delivery of the educational communication is dependent upon the method of contact. If the contact is in writing, the educational communication must accompany the written communication.⁶ If the contact is oral, the member must notify the former customer an educational communication that includes important information in deciding whether to transfer assets to the member will be provided no later than three (3) business days after the contact.⁷ Furthermore, the delivery of the educational communication shall apply for a period of six (6) months following the date the registered person begins employment or associates with the member.⁸

FINRA states the goal of this Proposal is to provide former customers with a more complete picture of the potential implications of a decision to transfer assets to a new firm. WFA recognizes the importance of this goal and offers the following suggestions to make the Proposal workable.

A. FINRA Should Remove the “Attempt to Induce” Language from the Proposal and Make the Timing of Delivery of the Educational Communication Consistent

Proposed Rule 2272(a) provides that a member firm will need to provide the disclosure at the point it “attempts to induce” the customer to transfer assets. However, FINRA does not provide a definition nor examples of what activities constitute an ‘attempt to induce’. Without this clarification, WFA would have difficulty verifying when an attempt to induce occurs. For example, is an oral discussion between a departing registered person and a former customer, where the registered person may simply be informing their former customer they are leaving their former broker, an ‘attempt to induce’? There are other hypothetical scenarios where “attempt to induce” is not sufficiently clear, thereby leaving a question about when the timing of delivery of the educational communication should occur.

In addition, the Proposal provides for different standards of delivery depending on whether the customer has been communicated with orally, electronically or in writing. The requirements around oral disclosure are particularly challenging to comply with from a financial advisor and firm supervisory perspective. It would require immediate recognition by the recruiting firm/registered representative that a particular oral communication constitutes an “attempt to induce”. Further, the registered representative would need to know that their communication was an “attempt to induce” and note this somehow so that the communication could be sent out. This also presents a challenge for member firms that would need to implement a supervisory process around the communication without a natural “trigger point.”

WFA believes replacing “attempt to induce” with a straight-forward requirement that the educational communication be delivered to the former customer with the account transfer

⁵ Proposed Rule 2272(b)(1)

⁶ Proposed Rule 2272(b)(1)(A)

⁷ Proposed Rule 2272(b)(1)(B)

⁸ Proposed Rule 2272(b)(3)

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paperwork, regardless of whether the inducement occurs in a written, electronic or oral manner. This would offer a more practical solution and alleviate unnecessary operational and supervisory uncertainty without negative impact to the customer.

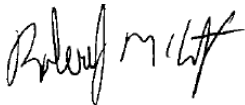
B. FINRA Should Shorten the Delivery Obligation

As stated earlier, Proposed Rule 2272(b)(3) requires delivery of the educational communication for a period of six (6) months following the date the registered person begins employment or associates with a member. WFA believes that three (3) months would be a more reasonable length of time to require delivery of the educational communication.

III. CONCLUSION

WFA appreciates the opportunity to comment on FINRA's Proposal and commends FINRA's continuing efforts to further educate customer on important issues such as transferring assets to a new firm. Please feel free to contact me with any questions or comments.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy