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VIA ELECTRONIC MAIL

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1745 K Street, NW
Washington, DC 20006-1506

Re: Disclosures of Services, Conflicts and Duties Concept Proposal ("the "Concept Proposal")

Dear Ms. Asquith:

We appreciate the opportunity to comment on the *Disclosures of Services, Conflicts and Duties* Concept Proposal issued by the Financial Industry Regulatory Authority ("FINRA").[1] This letter responds to FINRA's request for comment on the Concept Proposal that, if adopted as a rule, would require member firms, at or prior to commencing a business relationship with a retail investor, to provide a written statement to investors describing the types of accounts and services it provides, as well as conflicts associated with such services and any limitations on the duties the firm otherwise owes to retail investors.

I. Introduction

LPL Financial LLC ("LPL") is one of the nation's leading diversified financial services companies and is registered with the Securities and Exchange Commission ("SEC") as both an investment adviser and broker-dealer. LPL currently supports the largest independent registered representative base,[2] (referred to herein as "financial advisors") and the fifth largest overall registered representative base in the United States, providing financial professionals with the front, middle, and back-office support they need to serve the large and growing market for brokerage services and independent investment advice, particularly in the market of investors with $100,000 to $1,000,000 in investable assets. As of September 30, 2010, brokerage and advisory assets totaled $293 billion, of which $86 billion was in advisory assets. In 2009, brokerage sales were over $28 billion, including over $10 billion in mutual funds and $14 billion in annuities. Advisory sales were $23 billion, which consisted primarily of mutual funds.

LPL, as a dual registrant, is subjected to regulation by the SEC for its investment advisory services, and FINRA, the SEC and the states for its broker-dealer activities. LPL is also

[1] FINRA Regulatory Notice, 10-54, October 2010.
[2] Investment Advisor's Top 25 Independent Broker/Dealers, *Investment Advisor*, June 2010.

subject to Department of Labor ("DOL") regulations for brokerage and advisory services it provides to ERISA accounts, Internal Revenue Service ("IRS") regulations for qualified retirement accounts and 50 state insurance regulatory regimes for LPL's insurance activities. In addition, LPL engages in a limited commodities and futures business, and as such is regulated by the Commodity Futures Trading Commission and the National Futures Association self-regulatory organization.

LPL fully agrees with the Concept Proposal that retail investors should have at their disposal clear and concise information that describes material conflicts of interest and the obligations of their broker-dealer. Although LPL is generally supportive of providing additional meaningful disclosure to retail investors, certain of the information referenced by FINRA in its Concept Proposal is frequently available on member firm websites and in account agreements. Importantly, LPL believes that the manner in which any disclosure is provided to investors needs to ensure it is meaningful, clearly comprehended and easily accessible.

II. Current disclosure regime

LPL is a dual registrant, and as such is faced with two principal regulators that govern LPL's primary broker-dealer and investment advisory business. As described above, LPL is also regulated by many state and federal regulatory and self-regulatory authorities. These numerous regulators and regulations have unintentionally created disclosure redundancies and disparities, often contributing to retail investor confusion. For instance, for a retail brokerage account, LPL might be required to disclose to an investor certain of its potential conflicts of interest. While this approach would fulfill its responsibilities under the federal securities regimes, it would be insufficient to fulfill DOL responsibilities for certain retirement accounts. There are a number of other disparities among the regulations. For example, under FINRA rules, a broker-dealer must ascertain whether a specific securities recommendation is suitable to the particular investor's needs, while the SEC, under investment advisory regulations, would insist that the same individual, when acting as an investment advisor, determine that the recommendation is in the client's best interest as opposed to merely suitable.

Even the nomenclature between the regulators differs. For instance, revenue sharing in a DOL context would definitionally include any payment from a product issuer (such as 12b-1 fees). In contrast, the federal securities regulators and FINRA would define revenue sharing more narrowly (only including those payments that came out of the investment advisor's or distributor's own resources).

It is no wonder that retail investors are confused as to what conflicts exist and what services are being provided. The different disclosure regimes mandated to date by the various regulators have unintentionally helped facilitate the very concern this Concept Proposal seeks to redress. Although LPL agrees with FINRA that it is useful for retail investors to have all information needed to make informed decisions, LPL recommends that FINRA coordinate its disclosure proposals with the regulators discussed above in order to effectively provide meaningful disclosure.

A. Disclosure should not be too complex or numerous

Each regulatory regime has attempted to provide retail investors with protections, often in the form of disclosures that, ultimately, have led to information overload. For instance, if an LPL financial advisor's customer were to purchase a popular mutual fund at LPL, the investor might be presented with the following information – a 47 page statutory prospectus and a 250 page statement of additional information which collectively describe the principal risks of the fund and investment advisor's conflicts of interest; a three page fund fact sheet that describes high level details on fund performance; an eight page brokerage account agreement that details the responsibilities of the contracting parties; a five page conflicts of interest online webpage that details conflicts vis-à-vis sales incentives to the broker-dealer; an acknowledgement that the investor understands the investment; and a trade confirmation that details relevant factors about the specific trade. These roughly 315 pages of disclosure are in addition to any supplemental information provided by the broker-dealer such as disclosure on the firm's anti-money laundering policy, annual mailings of the firm's privacy policy, annual and semi-annual reports, monthly statements, investor notices, additional disclosure forms for certain investments and advertisements. This information also is in addition to any additional disclosures that may be presented if the account is a retirement account (such as custodial agreements and/or IRA applications) or if advisory services are also procured (such as Form ADV).

Indeed, the very premise that investors would make better informed decisions if they were presented with additional information appears unsupported. Instead, investors are presented with disparate and voluminous disclosures that take various forms and appear in multiple locations at different points in time. As illustrated above, the reading and understanding of these disclosure materials by investors when making real time decisions on investments is a challenging exercise. We encourage FINRA to recognize that numerous disclosures are no substitute for meaningful disclosures. Instead of further proposals that require additional disclosures, LPL recommends FINRA, in coordination with the SEC, concentrate its rule proposal on ensuring that the multitude of current information that is already available is being presented in a meaningful, concise and easily comprehensible manner.

B. Disclosure information should be readily accessible

To the extent that certain aspects of the Concept Proposal are ultimately adopted, LPL encourages FINRA to permit disclosure that is readily accessible and user friendly to retail investors. To that end, LPL believes that web-based disclosure best meets these needs in a cost effective manner. Web-based disclosure may be accessed at any time by any investor that desires to obtain additional disclosure information without inundating investors' mailboxes with what they may characterize as superfluous information. In addition, web-based disclosures may be changed quickly and easily when circumstances warrant. Finally, for those investors that are unable to access web-based information, broker-dealers could provide the information upon request at no charge[3].

[3] In fact, an online web disclosure mechanism would fit well with current government and consumer practice. Earlier this year, for instance, the IRS stopped sending tax forms to taxpayers when it was shown that less than 8% of taxpayers were using the materials provided in the mail. *Internal Revenue Service Public Announcement, http://www.irs.gov/individuals/article/0,,id=228162,00.html, October 2010.*

We also encourage consideration of mandating disclosure on a no more frequent than annual basis. This requirement would conform the disclosure requirements of Form ADV with the Concept Proposal disclosures. Moreover, although firms may wish to update their disclosures more frequently to address firm-level changes, because the circumstances of each firm will vary, we encourage FINRA to consider an approach that would provide firms broad latitude to address the time and manner of updating their disclosure.

III. The Concept Proposal needs to be considered together with other significant regulatory initiatives

LPL is fully supportive of FINRA's approach to obtain helpful industry feedback through the use of concept proposals. In fact, LPL strongly encourages FINRA to use the concept proposal approach with more frequency in the future as it addresses proposed industry rules and best practices. LPL also encourages FINRA to recognize the effects on the financial services industry of the significant impending structural changes. For instance, the dossier of regulations currently under consideration or recently finalized includes, Rule 12b-1 reform, a definition of fiduciary duty, the DOL definition of fiduciary, 408(b)2 Regulations, Pay-to-Play Regulations, and New Form ADV Part II.

Each of these recently enacted rules or proposals will have a profound impact on the financial services industry. Given the current regulatory climate, including pending regulatory initiatives to examine the differences between investment advisors and broker-dealers mandated by Dodd-Frank[4] and other congressionally mandated studies, LPL believes it is difficult to comment with certainty on particulars of a disclosure regime without a full understanding of the standards of conduct and duties owed to retail investors that are likely to be introduced in 2011.

IV. State and federal regulatory coordination

LPL recommends FINRA work with the SEC, the DOL and other state and federal regulators to develop one disclosure document that could apply to the financial services industry as a whole. We believe it is in all members' interest to develop, in collaboration with additional regulatory organizations, a more comprehensive, consumer friendly document that would address congressional concerns over the distinction between investment advisors and broker-dealers and each entity's conflicts of interest. It seems counterproductive for dual registrants to provide separate disclosure documents for their advisory and brokerage customers depending on the type of account they open (or, even more confusingly, both disclosure documents in the case of multiple accounts). Alternatively, LPL recommends a layered disclosure document in which the investor would have the option of reading additional information if he or she so desires. In addition, this document could list the services being provided and the conflicts associated with each service so that an investor could tailor the information he or she needs to fit with the level of services selected.

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[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, § 913(f), 124 Stat. 1376, 1828 (July 21, 2010).

LPL does not dispute that investors need useful, consumer friendly information concerning the investment services and the conflicts of interest that may arise, and LPL applauds FINRA's solicitation of industry participant feedback before moving to adopt more regulatory mandates. However, although FINRA may be the correct regulatory organization to lead this effort, without administrative guidance and regulatory certainty, LPL encourages FINRA to proceed cautiously and to coordinate its efforts to avoid overly burdening the industry and the retail investor with additional unuseful disclosures.

V. Conclusion

LPL would like to thank you for the opportunity to comment on the Concept Proposal. If you have any questions regarding this letter, please do not hesitate to contact me at (617) 897-4340. If helpful, LPL is ready and willing to meet with FINRA or its staff at any time to discuss this matter further.

Sincerely,

Stephanie L. Brown

By: 

Name: Steven Morrison
As Attorney-in-Fact

cc: Kathy VanNoy Pineda
Executive Vice President and Chief Compliance Officer
Steven Morrison
Vice President and Associate Counsel