

Comment Letter to FINRA regarding the proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Packages

Smith, Moore & Company is an employee model/dual licensed firm established in St. Louis, Missouri in 1913. The firm has 46 reps and clears through RBC Capital Markets LLC. Smith, Moore & Company appreciates the opportunity to comment on this proposed rule change that we feel could seriously impact our business model and the vitality of the industry as a whole.

The client benefits of the Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices as proposed in Regulatory Notice 13-02 are unclear and poorly substantiated. There is no proven correlation between the quality of the advice provided, expertise applied or integrity of an advisor and the amount of compensation they may receive to assist them in making a transition. The client impact is limited to either the loss of their advisor or their need to complete and sign new account documents with another firm. Most firms reimburse clients for the costs associated with the transfer of their assets to their advisor's new firm. There is certainly no guarantee that a client will follow their advisor and most advisors are acutely aware of the potential loss of clients that may occur if they change firms.

The rule could potentially prevent an advisor from leaving a firm they feel has poor ethics, high pressured sales practices or poor service to low net worth clients. The rule could prevent an advisor from leaving a firm because their current firm is decreasing advisor compensation due to unduly high performance levels. An advisor may fear their clients would interpret the compensation package as a bribe or as excessive. A client most likely would not have the ability to understand the compensation the advisor currently receives or the customary lost revenues an advisor suffers during the first 3-6 months after a transition as well as the risk the advisor takes by making the transition.

Risk, time and lost compensation are some of the factors used to determine a transition compensation package. The new firm also must determine the advisor's potential future value to the firm as a whole in order to place a value on its investment of time, support, and licensing, potential legal claims by the firm losing the advisor as well as the potential the advisor will not meet the standards of the firm upon arrival. The process is already overshadowed by the necessity of clandestine meetings and handshake commitments. It is the opinion of this firm that the mandated disclosure serves primarily to further sensationalize the transition of an advisor from one firm to another.

There is no information provided in the notice to support the implied harm to a client as the result of an advisor's move from one company to another or how the recruitment compensation package itself harms a client. Please explain how a client's decision to remain loyal to an advisor who has earned their trust and adequately provided the services for which they were paid during the course of their relationship is aided by knowing the income the advisor will receive from the firm. It would seem this very personal disclosure could only ever negatively impact the relationship.

It is basic human nature to be envious of other people's pay. Many clients of an advisor are their personal family, friends, associates and others in their community. Disclosing the details of their pay would only provide fodder for gossip and could have a significant impact to the advisors personal relationships.

Would it be better for people to choose strangers, the internet or anonymous call centers to manage their finances? Will firms be required to disclose all payout, incentive, and salary and bonus information at some point? Will firms be required to disclose the amount of compensation they pay to retain advisors or staff? What is the difference between retention compensation and transition compensation?

As FINRA is well aware, when one company purchases another, it is customary for the acquirer to offer "retention packages" to the acquired advisors. How does this practice differ from a disclosure aspect than what is contemplated in the proposed rules? Should clients fear that the newly created entity may have different goals and objectives and that the advisor could be "swayed to stay" given this retention package?

Has FINRA considered firms legal responsibilities regarding privacy? Could this rule lead firms to commit unlawful acts under Department of Labor or other governmental and self regulatory rules and regulations regarding privacy of employee data? Has FINRA considered the legal expenses it may incur if this rule is adopted as proposed and then challenged in the court system? Is this the best use of FINRA time, efforts and resources as a self regulatory body funded by the industry?

Furthermore, the proposed \$50,000 de minimis does not seem to take any of the normal factors used to create a transition package into account. As stated earlier, there are a number of factors used to determine an appropriate recruiting compensation package. It is very unclear how FINRA has arrived at this seemingly random number.

Finally, this firm to proposes that FINRA require the recruiting firm to report to FINRA the recruiting compensation, retention compensation and other incentives.. As our regulatory body, FINRA has the industry knowledge and understanding to fairly determine whether a compensation package is justified. FINRA would be able to see the advisors total number of clients, assets under management, and years of experience, U-4, licenses, and years at the firm they are leaving and an understanding of the business practices of the firm they are both leaving and joining. We agree that the recruiting compensation packages should be justified by a consideration of risk, value and potential cost. However, we do not believe the general public has the knowledge to determine "fairness" of a recruiting compensation package without having a full picture of all the factors involved nor do we understand how the information "helps" a client.

Thank you for your consideration of our concerns.

Sincerely,

Donna Frederick
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