



National Association of Insurance and Financial Advisors

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March 1, 2013

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

VIA E-MAIL (pubcom@finra.org)

Re: Proposed Rule Concerning Recruitment Compensation Practices (Regulatory Notice 13-02)

Dear Ms. Asquith:

The National Association of Insurance and Financial Advisors (NAIFA) appreciates the opportunity to provide you with comments with respect to the Financial Industry Regulatory Authority (FINRA) proposed rule to require disclosure of recruitment compensation practices, as discussed in Regulatory Notice 13-02 (the Proposed Rule).

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

NAIFA has several areas of concern regarding the proposed rule.

First, as a general proposition NAIFA is concerned that focusing on one aspect of the advisor/firm/investor relationship--the incentive compensation received by a registered representative from the new broker-dealer when the registered representative changes firms--will be disruptive to the investor/advisor relationship and not provide any additional protection to the investor. This type of emphasis will cause investors to focus their attention on compensation issues rather than on more relevant matters such as the net costs to the investor of working with one broker-dealer firm versus another firm, the relative advantages of one firm over another with respect to the platform, products and services offered, the performance of the investor's portfolio in relation to the investor's risk profile, and the investor's overall satisfaction with his or her registered representative.

There are many valid reasons why a registered representative may choose to move from one firm to another. The fact that certain incentives were received by the registered representative in connection with such a move should not, in and of themselves, call into question the motivation behind such a move or serve as an indication that any such move was made for any reason other than the best interests of the representative's clients. For these reasons, NAIFA asks FINRA to reconsider whether the adoption of such a rule would be in the best interests of consumers.

With respect to specific concerns regarding particular elements of the proposed rule, NAIFA has the following comments:

1. The *de minimis* exception set forth in subsection (e) of the proposed rule for enhanced compensation under \$50,000 is set at too low an amount for today's economy, given FINRA's stated purpose for such exception as being "to allow firms to offset a registered person's ordinary costs in the transition process, since such compensation does not raise the same degree of conflicts of interest as more lucrative enhanced compensation arrangements." Given the potential increase in direct and indirect costs which might result from the adoption of the proposed rule, the *de minimis* exception amount should be raised to \$100,000 or higher. In addition, establishing a specific dollar amount *de minimis* exception does not take into account the fact that the exact amount of some commonly used incentives will not be able to be determined as of the time the representative

changes firms. In light of this, we recommend FINRA consider the alternative disclosure approach discussed in Notice 13-02, discussed in item 7 below.

2. Transition assistance in the course of a move from one firm to another, such as moving expenses and the cost of furniture, staff and termination fees which might arise in connection with moving accounts to the new firm are more in the nature of “cost of doing business” expenses and are inherently different from other forms of incentive compensation described in Notice 13-02. These types of expenses and assistance should not be included in the scope of the proposed rule.
3. Section (a) of the proposed rule states that a member firm must disclose “the *details* of such enhanced compensation...” (Italics added). The word “details” is a vague term that does not provide specific, clear guidance of exactly what must be disclosed.
4. The suggestion in Notice 13-02 that the proposed rule could include a requirement that “a customer affirm receipt of the disclosure at or before account opening at the new firm” could not only delay the account opening process at the new firm in a manner that would be detrimental to the client but would add to the already voluminous mountain of forms and documents that investors must be given and/or sign. Such a requirement could also prove in many cases to be simply unworkable.
5. Notice 13-02 asks whether the proposed rule should “apply to all customers recruited by the transferring registered person during the year after transfer.” NAIFA does not agree with this proposal. There is no valid reason for requiring this type of disclosure about past compensation to new clients. The rule, if adopted, should only apply to persons who were clients of the registered representative during his/her employment at the previous firm. It should not apply to i) new clients or ii) to persons who are clients of the previous firm but who were not clients of the registered person during his time at the previous firm.
6. The requirement that disclosure under the rule be provided for one year following the registered person’s association with the new firm is too long a time period for requiring the specified disclosure. Based upon common industry practice, the time frame for required disclosure should be reduced to between three and six months.
7. If the decision is made to proceed with some form of the proposed rule, then NAIFA recommends that the alternative approach referenced in Notice 13-02 should be followed: a general disclosure by the firm or registered representative to the effect that he/she will

receive enhanced compensation in connection with the transfer of his/her employment, along with a statement that additional information regarding such compensation is available upon request.

Thank you for your consideration of NAIFA's comments on the proposed rule.

Sincerely,

/s/ Gary A. Sanders

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