

Fred Fram
Executive Vice President
Compliance and Operations

March 5, 2013

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

VIA E-mail to: pubcom@finra.org

Re: FINRA Notice 13-02 – Recruitment Compensation Practices

Dear Ms. Asquith:

I am writing on behalf of Summit Brokerage Services (“Summit”) with comments addressing FINRA’s proposed rule regarding disclosure of recruitment compensation. Summit is a retail broker-dealer with approximately 300 registered representatives operating from offices around the country. Summit is an active recruiter of new registered representatives and we are therefore appreciative of the opportunity to provide comments regarding the proposed rule.

Before addressing the questions raised by FINRA in Notice 13-02, we wish to make three key points. We believe the proposed rule is unnecessary. We believe that if FINRA goes forward with the rule, more egregious conflicts must be addressed contemporaneously. We believe that if FINRA goes forward with the rule, a distinction must be made between transition assistance and recruiting compensation, with greater clarity provided on the valuation of recruiting compensation. I will address each of these points in greater detail, below.

As a starting point, we are unaware of why FINRA has proposed this rule. Other than referring to a letter written by past SEC Chairman (and FINRA CEO) Mary Shapiro in 2009, FINRA has yet to provide any explanation as to why this rule is believed to be necessary. Other than that, FINRA relies on one unsubstantiated sentence in the *Background & Discussion* section of the Notice. We are unaware of any allegations of harm to investors due to transition assistance or recruiting compensation. To the contrary, when a registered representative contemplates changing firms, regardless of the level of recruiting compensation provided, it is in his/her best interest to select the firm they believe will best support their long-term success. In a similar vein, when a client chooses to follow a registered representative to a new firm, it is because the client has developed a level of trust and confidence in the registered representative’s abilities. Clients change firms because they wish to continue working with a particular registered representative rather than because they have been sold on the “new” broker-dealer being better than the “old” broker-dealer. In fact, our experience is that in many cases, clients are unaware of the name of the broker-dealer. What they know, is the name of the registered representative who they have chosen to assist them with their investments.

If FINRA elects to move forward with some of the proposed rule, we strongly urge that related issues be addressed at the same time. A failure by FINRA to do so would, by their own reasoning, subject clients to an “unlevel” playing field that creates incentives adverse to their interests. Specifically, I refer to so-called “retention payments.” We have seen these payments used by firms looking to retain their current brokers, usually when there are rumors of a possible takeover and/or operating difficulties. Likewise, when a firm is acquired, the buyer typically offers a retention payment to the acquired brokers. To the extent that FINRA believes that the payment of recruiting compensation to brokers may present a conflict of interest, we believe that the payment of retention compensation presents an even greater conflict. We believe that in the case of a firm that feels compelled for whatever reason to offer retention compensation to its brokers, clients would have an interest in knowing that their registered representative is receiving a special incentive to discourage the registered representative from considering a more stable broker-dealer. Certainly, many acquisitions present challenges integrating firms’ technology, culture, pricing, etc...In these circumstances, too, clients would benefit from knowing that their registered representative may be staying with the merged firm because he/she is being paid additional compensation to do so. So, if FINRA moves forward with the disclosure of recruiting compensation, we strongly urge that retention compensation be addressed at the same time.

We are also concerned about the lack of distinction being drawn in the proposed rule between transition assistance and recruiting compensation. The natural state of affairs in the brokerage world discourages registered representatives from changing firms. There are a number of expenses that may be incurred in changing firms. These expenses include:

- Fees for being relicensed by FINRA and the States;
- Reprinting business cards/letterhead;
- Updating disclosures on web sites and other social media sites; and
- Preparation, distribution and processing of account transfer paperwork (frequently includes overtime to existing staff and/or hiring temporary workers.)

And, this assumes that the representative already has his/her own place of business with computers, staff, a phone system, etc...For representatives going out on their own for the first time, the up-front expenses are even more daunting. At the same time representatives are incurring the hard-dollar expenses of a transition, they also face the temporary disruption in income until clients transfer their accounts to the representative’s new broker-dealer.

Because these up-front expenses may result in a significant barrier to the job mobility of registered representatives, we believe that any final rule must distinguish between transition assistance and recruiting compensation. We suggest that transition assistance be permitted in an amount up to the documented expenses incurred by the registered representative in changing firms. Permitting transition assistance allows a registered representative to seek out the right firm given how the representative’s career has evolved to that point, rather than being compelled to remain at a firm that is a “bad fit” due to the cost of changing firms.

With regard to the specific questions raised by FINRA in Notice 13-02, we offer the following comments for consideration. As we generally oppose the proposed rule, these comments are intended to apply should FINRA move forward with the proposal.

- We believe that only written disclosure should be required. We believe that disclosure should only be required at or prior to the opening of the account. We fail to believe that oral or written disclosure at the time of first contact represents a material benefit to the investor, while adding additional cost and complexity to the operations of the registered representative and the firm. We believe the disclosure requirement should only apply to clients formerly served by the registered representative at his/her prior firm and we would support the one-year timeframe.
- We would be supportive of the alternative approach providing only general disclosure with an invitation to seek additional information upon request or at a specified location on the firm's website. For all but the simplest of relationships, changing broker-dealers may be a very paper and disclosure intensive process. Anything that adds to the paperwork and disclosures risks diminishing the overall impact of the individual disclosures.
- We consider the proposed \$50,000 threshold to be arbitrary and lacking in context. While \$50,000 may be a meaningful figure for lower – producing representatives, it is a minor consideration for more successful representatives. As an alternative, we would suggest that any threshold be expressed as a percentage of the gross concession generated by the representative over the past twelve months, (commonly referred to as "T12"). In the *Background & Discussion* section, FINRA references deals as rich as 200% - 300% of T12. We believe that a reasonable threshold would be triggered by recruiting compensation equal to or exceeding 150% of T12.
- On a related note, we were dismayed by the lack of clarity by FINRA on how certain forms of recruiting compensation are to be defined and valued for purposes of the proposed rule. While the value of an up-front payment is quite easy to determine, other forms of compensation present more complexity. These include any type of accelerated payout or a back-end bonus that is predicated on a certain level of production and/or assets under management. Should FINRA elect to move forward with this rule, we would expect FINRA to propose additional details in this area and permit an additional comment period to collect feedback.

In closing, I again want to extend our appreciation for the opportunity to comment on a proposal that impacts such an important part of Summit's business.

Sincerely:



Fred Fram
Chief Compliance Officer