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VIA E-MAIL (pubcom@finra.org)

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

Re: Regulatory Notice 13-02 Regarding Recruitment Compensation Disclosure

Dear Ms. Asquith:

This letter is in response to Regulatory Notice 13-02, which seeks comment on a proposed rule that would require certain detailed disclosures of broker recruitment compensation packages when registered representatives transition between firms. Our firm opposes such proposed rule for reasons we set forth below.

Our firm has represented hundreds of registered representatives in the process of transitioning between brokerage firms for many years, and, as such, is highly familiar with the brokerage firm recruiting process and the way the various firms structure their recruiting packages. We also represent smaller brokerage firms and many individual retail investors who have suffered harm through sales practice and other abuses by registered representatives and brokerage firms. As such, we believe we are uniquely qualified to offer comment on the proposed rule.

The proposed rule seeks to address purported conflicts of interest, but takes an overreaching stance which instead seems to require a registered representative to disclose private information that is not pertinent to a retail investor contemplating following their financial advisor from one firm to another and potentially harms the registered representatives' interests. In the letter FINRA cites by SEC Chairman Shapiro, Ms. Shapiro voices a concern that certain enhanced compensation practices may pressure registered representatives to increase their level of production in order to justify their enhanced compensation. The problem with this argument is that registered representatives are always incentivized to increase production, just as any person who sells a product or service. Registered representatives who are just below the next level of a grid payout are incentivized to reach their next goal. These individuals are not, and should not, be required to send out written correspondence every time they are close to reaching the next grid threshold. Also, for a registered representative with all fee-based clients, FINRA and the

SEC have not identified any potential conflict of interest. Similarly, for recruiting packages that pay back-end bonuses only based upon assets under management hurdles, no potential conflicts have been identified.

From the prospective of many of the registered representatives with whom we have discussed the proposed rule, the biggest flaws are its misplaced assumptions and the fact that it is far too vague to meaningfully comment upon. The proposed rule would require the "disclosure of the details of any enhanced compensation," but does not even attempt to define "details." Clearly, a registered representative's compensation, client assets under management and other earning information are confidential and would not be included in these "details." FINRA's silence on what constitutes "details" leaves most market participants unable to meaningfully comment on that part of the rule. In an overabundance of caution, we submit that any disclosable details would have to be generic enough to protect the registered representatives' highly confidential earnings and client assets under management information. Conceptually, disclosures regarding a registered representative receiving an upfront bonus that was based upon some percentage of that registered representative's trailing twelve month production would not be as much of a concern for an individual than a more detailed disclosure. While we disagree that even these more general disclosures are needed, we believe they are less objectionable while addressing what we believe are FINRA's misguided concerns.

For example, assume Broker A, a $1M producer with a $100MM book of business, and Broker B, a $2M producer with a $200MM book of business both generate 1% exclusively from fees from their books. Under the proposed rule, both might have to inform customers of the specific dollar amounts in enhanced compensation they received from their new firm. A customer of either broker will be no more on notice of any potential or perceived conflict of interest knowing the dollar amount one was paid versus the other. What would a client with $5MM in their account paying a 1% fee for account management have learned to help them to decide to follow their broker if they know one received $1.5MM and the other received $4MM upfront with more possible in the future? We submit nothing relevant, but both might be embarrassed or a smaller client might become resentful when they learn the amount of enhanced compensation. Again, if any disclosure is required, it should only be the percentage of their brokers' trailing-12 they will receive upfront, as well as the back-end bonus percentages they might be receiving in the one year time period. To require registered representatives to disclose their personal compensation is a violation of their right to privacy. Other professionals, such as lawyers, doctors and accountants are not required to disclose their compensation to the individuals they service if they change firms or employers. Registered representatives should not be the exception.

If FINRA decides to implement this rule, we address the following specific comments:

Requiring Disclosure While A Representative Is Still At Previous Firm

To the extent disclosure is required, it should not be a requirement while a representative is still at a previous firm. The representative's previous firm is almost never on notice that he/she is transitioning firms, and as such, the representative should have the ability to decide when to inform the previous firm of his/her resignation. If this proposed requirement is implemented, the previous firm will learn of the intended transition from one of the customers, and then terminate the registered representative in order to attempt to keep a substantial portion of the representative's book of business. It is anti-competitive, but would happen in certain instances. This notice may also violate existing contractual or statutory obligations the employee owes their previous employer. It is patently unfair to attempt to protect customers from a purported conflict of interest, yet harm a representative's livelihood.

Requiring Written Disclosure At First Individualized Contact

Written disclosure at first individualized contact should not be required as this will prevent registered representatives from having the ability to quickly contact customers when they transition firms in order to inform them of their new contact information. Instead, they will have to wait until such customers receive written correspondence and then contact them, effectively leaving customers in the dark. Imagine a client calls their broker for much needed advice only to be told that they have left the firm and moved to a new firm. The investor calls the new firm and is told by the new firm that their trusted advisor cannot speak to them until a "detailed" recruiting disclosure form is drafted, sent to them and acknowledged by the investor. The investor is furious and left without advice for a nonsensical purpose and might very well go to someone else for advice. Speaking from first-hand experience, speed and efficiency of contact are crucial, and it would be inefficient and disadvantageous to both the representative and the customer if written disclosure is required at first individualized contact.

The $50,000 *de minimis* Exception

FINRA should forego the disclosure of a specific dollar amount and instead only require that the payout percentages a registered representative is receiving be disclosed as $50,000 is an arbitrary and low threshold amount. Most transitioning representatives receive in far excess of $50,000 in enhanced compensation; therefore, a majority of representatives will have to disclose this information when it is not relevant to a purported conflict of interest. Further, the $50,000 threshold may very well prevent firms from hiring registered representatives that are just above this low threshold as there will be costs associated with adhering to this proposed requirement that may be prohibitive in the hiring of smaller producers.

Conclusion

The proposed rule is not well designed to reduce alleged conflicts relating to recruitment compensation practices and instead could harm registered representatives' interests with no practical purpose. Before any action is taken a thorough explanation of what FINRA considers the disclosable "details" needs to be fully released and a new comment period provided.

Very truly yours,

/s/ Brian J. Neville
Brian J. Neville, Esq.