

MarketCounsel appreciates the opportunity to comment on the proposed rule discussed in Regulatory Notice 13-02, Disclosure of Recruitment Compensation Practices. MarketCounsel and its affiliated law firm, the Hamburger Law Firm, have worked with hundreds of transitioning brokers who have been offered and/or received "enhanced compensation" for transitioning employment to another firm and others that have received additional compensation by their current firm to stay put and not move to another firm. MarketCounsel believes that customers are entitled to disclosure of any material conflict of interest and compensation arrangements between brokers and their firms that incent any behavior over another are material to the customer. Because we believe that compensation intended to encourage an action should be disclosed, MarketCounsel feels that retention compensation should be disclosed as well.

As discussed in FINRA's Regulatory Notice, enhanced compensation on transition has long been a concern amongst regulators and broker-dealers alike. MarketCounsel believes that it is in the best interest of clients and brokers to require disclosures about enhanced compensation. We further believe, however, that the specificity of the disclosure that FINRA is seeking is too narrow yet overly burdensome in its specificity.

MarketCounsel feels that disclosure of the conflict of interest, including a description of the type of, and reason for, enhanced compensation along with the potential outcome that the conflict may bring about is sufficient notification to clients. Requiring full and specific disclosure of the amount of the enhanced compensation does not permit brokers to explain the justification, allocation, and duration of service in what may otherwise be a customary and reasonable arrangement. Clients can always ask more questions about the enhanced compensation arrangements to which brokers are obliged to respond consistent with their duty of good faith and fair dealing.

We once again appreciate the opportunity to comment on this proposed rule.

Regards

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