



**Nina Schloesser McKenna**

General Counsel

2519 Tomahawk Road

Mission Hills, Kansas 66208

OFFICE: 913-789-8691 FAX: 913-789-8693

nina.mckenna@cetera.com

VIA ELECTRONIC MAIL

March 5, 2013

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

Re: Regulatory Notice 13-02

Dear Ms. Asquith:

Cetera Financial Group, Inc. appreciates the chance to comment on Regulatory Notice 13-02 ("RN 13-02") which requests comments on a proposed rule ("Proposed Rule") that would require specific disclosure by a recruiting member firm of "enhanced" compensation a representative receives as part of his or her recruitment to a member firm ("Recruitment Compensation").<sup>1</sup> Cetera Financial Group, Inc. ("Cetera") is the holding company of four independent channel broker-dealers<sup>2</sup> with approximately 6,500 financial advisors and more than 600 financial institutions. Our broker-dealers conduct a retail business, and serve customers of all income levels and sophistication.

Cetera supports disclosures of potential material conflicts of interest, done in a way that helps retail customers make the right decisions with respect to their investment decisions. However, we do not think the Proposed Rule accomplishes that laudable goal. It is not well designed to provide protections to retail customers beyond what is afforded under current securities laws and regulations. It also places an undue burden on retail customers to not only evaluate raw data and numbers without context as to what Recruitment Compensation is common in the industry or what might be out of the ordinary, but also to determine the relationship, if any, between the Recruitment Compensation and recommended products or strategies. Because the proposed disclosures would be complex and operationally challenging to implement, the costs appear to outweigh any potential harm to customers from recruitment incentives. Additionally, the Proposed Rule calls for detailed disclosure of non-public personal financial information of registered representatives, without a demonstration that the unintended loss of privacy is outweighed by the benefit to retail customers of Recruitment Compensation disclosure.

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<sup>1</sup> Regulatory Notice 13-02 describes a Recruitment Compensation as "...some combination of upfront bonuses, forgivable loans, transition assistances and back-end production bonuses."

<sup>2</sup> Cetera Advisors LLC, Cetera Advisor Networks LLC, Cetera Financial Institutions (Cetera Investment Services LLC), and Cetera Financial Specialists LLC.

For these reasons, Cetera believes that the best approach is to provide a “Plain English” generalized disclosure of Recruitment Compensation to retail customers at the earlier of delivery of an ACAT form or at account opening. A generalized disclosure, with categories or types of Recruitment Compensation listed would prompt a dialogue between recruited registered representatives and retail customers on Recruitment Compensation and its impact, if any, on product and strategy recommendations. Such dialogue would likely be more valuable to a retail customer than just raw numbers without context or a frame of reference.

### **The Proposed Rule is not Well Designed to Provide Additional Protections to Retail Customers**

The Proposed Rule is not well designed to provide additional protections to retail customers beyond which are afforded under current securities laws and regulations. RN 13-02 states that specific disclosures are needed to address “conflicts of interest” in relation to Recruitment Compensation which may lead “...registered representatives to believe that they must sell securities at a sufficiently high level to justify special arrangements that they have been given...”<sup>3</sup>, thereby resulting in inappropriate activity (such as churning) or unsuitable product recommendations (such as sale of a product held at the former member firm to effect the transfer of the retail customer’s account).

Even before the enhanced FINRA suitability rule was adopted in 2012 (Rule 2111), member firms were clearly obligated to carefully supervise liquidations, replacements or surrenders in customer accounts of newly transferred registered representatives, to ensure that transactions were “based upon the customer’s investment needs and not the financial needs of the firm or its associated persons.”<sup>4</sup> Unsuitable transactions by newly transferred registered representatives are even more clearly circumscribed by Rule 2111, which requires that not only must recommended products be suitable, but also that recommended *strategies* be suitable. Given that context, it is unclear how a detailed disclosure of Recruitment Compensation that is not linked to a specific customer product or strategy recommendation provides additional protection to retail customers not already afforded by existing securities laws and regulations.

### **The Proposed Disclosures are Complex and Operationally Challenging to Implement**

As written, the proposed rule would require that recruiting member firms make detailed disclosures to former customers of any Recruitment Compensation paid to a registered representative in relation to his or her recruitment. The disclosure would be triggered when a former customer is contacted by the recruit or the recruiting member firm regarding account transfer, or the former customer seeks to transfer his or her securities account to the recruiting member firm. As further described, although the initial disclosure could be oral<sup>5</sup>, ultimately the recruiting member firm would need to provide clear and

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<sup>3</sup> Citing Open Letter to Broker-Dealer CEOs from SEC Chairman Mary L. Schapiro, dated August 31, 2009, available at <http://www.sec.gov/news/press/2009/2009-189.htm>.

<sup>4</sup> See Notice to Members 07-06, at page 3.

<sup>5</sup> Other commentators have addressed the challenges of supervising oral communications, and we concur with those comments. We also do not think it would be advisable or even possible for the recruited registered representative to make those disclosures while still at his or her prior member firm.

prominent written disclosure of the timing, amount, and nature of the Recruitment Compensation at the time of the customer account transfer.

RN 13-02 states that the written disclosure would need to be prominent and provide details of the Recruitment Compensation paid to the recruited financial advisor, rather than a “general disclosure” in “small type” of an “unspecified bonus”. A detailed disclosure provided when the client is contemplating the transfer of his or her account(s) is more likely to run the risk of being ignored by the client, either because it appears to be confusing or intimidating for the client to digest. A brief generalized disclosure presented prominently and in plain English is more likely to generate questions from the client that would lead to a more meaningful conversation relating to the registered representative’s compensation received in connection with the recruitment.

Leaving aside the usefulness of a disclosure of the gross amount of Recruitment Compensation to a retail customer who is trying to decide whether to transfer his or her account, this approach to disclosure will be extraordinarily difficult to implement, manage and supervise. Presumably, the disclosure would be made at the time an ACAT form is submitted to the former member firm by the recruiting member firm, or in the case of direct business at the time a change of broker is requested by the customer. In either case, detailed disclosure of Recruitment Compensation would be highly manual in that the recruiting member firm would have to: 1) determine if the customer is a former customer of the recruited registered representative; and, 2) ensure that the right Recruitment Compensation disclosure is linked to the right set of account transfer instructions. This process would be even more complicated in the case of customer accounts serviced by joint registered representatives, group recruitments, and if Recruitment Compensation changes during the one year delivery period. Requiring customer affirmation of the Recruitment Compensation disclosure would delay account transfers and add yet another layer of complexity. Although the Cetera broker-dealers are sufficient in size to manage this level of complexity, the operational impact of detailed disclosure of Recruitment Compensation will likely adversely impact smaller to mid-sized member firms, already coping with complex regulatory requirements and operating systems.

### **Impact on Business Practices**

We join other commentators who have expressed concern about financial privacy. While the Gramm-Leach-Bliley Act and Regulation SP would not literally prohibit dissemination of this kind of information, since the recruited financial advisor would not be a “consumer” or a “customer”, written disclosure of non-public personal financial information would expose the recruited financial advisor to greater risk of identity theft and data security incidents. Detailed disclosure of Recruitment Compensation is contrary to the direction in which most countries and many states have moved to better protect non-public personal financial information.

We also agree with other commentators that the Proposed Rule could result in an indirect restraint on trade and suppression of fair competition inconsistent with the requirements for establishment of a registered securities association under the Securities Exchange Act<sup>6</sup>.

**Conclusion**

We support meaningful and commonsense disclosures of potential conflicts of interest and think that the best approach would be a generalized written disclosure to all retail customers of newly registered representatives at the earlier of delivery of the ACAT form or account opening. Thank you for your consideration of our comments. Should you have any questions, please contact me at 913-789-8691.

Respectfully submitted,

*Nina Schloesser McKenna*

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<sup>6</sup> Section 15A(b)(6) and (9).