

July 13, 2015

By Electronic Mail to [pubcom@finra.org](mailto:pubcom@finra.org)Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506Re: *FINRA Regulatory Notice 15-19: FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative*

Dear Ms. Asquith:

LPL Financial LLC (“LPL”) appreciates the opportunity to comment on the proposal (“Proposal”) by the Financial Industry Regulatory Authority (“FINRA”) to adopt FINRA Rule 2272, Educational Communication Related to Recruitment Practices and Account Transfers.<sup>1</sup> We are fully supportive of FINRA’s efforts to increase transparency for investors regarding potential conflicts of interest presented by recruitment compensation and provide investors with important information pertaining to transferring accounts from one broker-dealer to another. We believe that the Proposal will achieve these goals. In the sections that follow, we provide recommendations relating to operational aspects of the proposal. We suggest streamlining the delivery requirements, excluding bulk transfers relating to changes in networking arrangements with financial institutions, adding some information to the proposed educational communication, clarifying the term “attempt to induce,” and modifying the timing of one of the delivery requirements.

**I. OVERVIEW OF LPL**

LPL is a leader in the financial advice market and, as of March 31, 2015, serves \$485 billion in retail assets. We provide proprietary technology, comprehensive clearing and compliance services, practice management programs and training, and independent research to more than 14,000 independent financial advisors and over 700 banks and credit unions. LPL has been the nation's largest independent broker-dealer since 1996. Additionally, LPL supports approximately 4,300 financial advisors licensed with insurance companies by providing customized clearing, advisory platforms, and technology solutions. LPL Financial and its affiliates have more than 3,300 employees.

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<sup>1</sup> See FINRA Regulatory Notice 15-19, available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Notice\\_15-19.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf) (last visited July 7, 2015).

## II. SUMMARY OF THE PROPOSAL

The Proposal requires a member firm ("*Recruiting Firm*") to deliver an educational communication ("*Educational Communication*") to any former client ("*Former Client*") of a registered representative when (a) the Recruiting Firm hires or associates with the registered representative and attempts to induce the Former Client of that registered person to transfer assets, or (b) the Former Client of that registered person, absent inducement, transfers assets to an account assigned, or to be assigned, to the registered representative at the Recruiting Firm. The Educational Communication provides a number of disclosures related the process of transferring an account to a new firm and provides a list of questions the Former Client may want to ask to make an informed decision.

As currently proposed, the Educational Communication must be delivered to a Former Client when a registered person attempts to induce a Former Client to move his/her accounts to the Recruiting Firm through a letter, an electronic communication, or an oral conversation. The Proposal also requires a Member Firm to deliver the Educational Communication when the Former Client seeks to move his/her accounts with no inducement.<sup>2</sup>

Each set of circumstances giving rise to a delivery obligation involves a different delivery process and time. More specifically, if the registered representative contacts the Former Client through a letter, the letter must include the Educational Communication. Alternatively, if the registered representative contacts a Former Client through an electronic communication, the electronic communication may include a hyperlink to the Educational Communication. In the instance of an oral conversation with the Former Client, the Educational Communication must be sent to the Former Client within three (3) days following the conversation (or with any other documentation sent to the Former Client related to the transfer of assets, whichever is earlier). The last set of circumstances permits the Educational Communication to be sent with the account transfer approval documentation if the Former Client attempts to transfer assets to an account assigned to the registered representative at the Recruiting Firm. The requirement to provide the Educational Communication continues to apply for six (6) months after the registered representative begins employment with the Recruiting Firm.<sup>3</sup>

## III. RECOMMENDATIONS:

### A. CONSIDER SIMPLIFYING THE DELIVERY PROCESS

LPL recognizes and agrees with the purpose of the Proposal: to increase transparency for investors regarding potential conflicts of interest and provide investors with important information pertaining to transferring accounts. Regarding the delivery of the Educational Communication, we recommend a simplified approach. Rather than requiring delivery of the Education Communication based on a contact that "attempts to induce," and varying the delivery

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<sup>2</sup> This last set of circumstances includes the instance in which a former client subsequently decides to transfer assets to the Recruiting Firm within the six months following the date the registered person associates with the Recruiting Firm.

<sup>3</sup> See supra note 1.

timing based on the method of inducement, we suggest instead requiring delivery with account transfer documentation. The delivery of account transfer documentation is an established process that could be modified for inclusion of the Educational Communication. It is at this point when the Former Client would consider officially agreeing to transfer his/her accounts. The Former Client would already be reviewing the information presented in the transfer paperwork prior to approving the account transfer. As a result, this would seem to be an appropriate time to ensure that the Former Client understands the potential ramifications of moving his/her accounts. Delivery of the Educational Communication with the account transfer documentation would also allow for more efficient monitoring and tracking of compliance with the requirements. Leveraging this existing process would be more efficient and effective than a multi-pronged process, while still providing investors with the information they need to make informed decisions.

**B. CONSIDER AN EXCLUSION FOR CLIENT ACCOUNTS CONVERTED VIA BULK TRANSFER RELATING TO CHANGES IN BROKER-DEALERS UNDER FINANCIAL INSTITUTION NETWORKING AGREEMENTS THAT FALL UNDER NASD NTM 02-57**

The bulk transfer of client accounts to a new broker-dealer in the context of a changed financial institution networking arrangement represents a unique set of circumstances. While the Educational Communication addresses the context of individual registered representatives who decide to move to a new broker-dealer, the decision of a financial institution to transfer its networking arrangement to a new broker-dealer is made by the financial institution, not the registered representative. Furthermore, the financial institution controls the book of business and is commonly the employer of its registered representatives. Pursuant to NASD Notice to Members 02-57 and the Opinion of General Counsel regarding NASD Notice to Members 04-72, in this context, FINRA permits the transfer of all customer accounts to the new firm using negative response letters that must meet a number of requirements.<sup>4</sup> Given these different circumstances, we suggest that FINRA consider excluding these financial institution bulk transfers from the proposed rule.

**C. CONSIDER ADDING INFORMATION TO THE EDUCATIONAL COMMUNICATION**

LPL believes the Educational Communication provides a number of important disclosures regarding the potential costs and conflicts that could be associated with the transfer of the Former Client's accounts to the Recruiting Firm. In the paragraph addressing why a registered representative decided to change firms,<sup>5</sup> we recommend that the disclosure also clarify for investors that in some instances the decision to transfer is made by the registered representative's employer, because the employer moves to a new broker-dealer.

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<sup>4</sup> See NASD Notice to Members 02-57 (Sept. 2002); Memorandum from the NASD Office of the General Counsel regarding Notice to Members 04-72 available at <https://www.finra.org/industry/interpretive-letters/november-8-2004-1200am> (last visited July 11, 2015).

<sup>5</sup> See supra note 1 at 10 (third paragraph).



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In addition, as FINRA is likely aware, many registered representatives enter into a non-compete or non-disclosure agreement when hired by a member firm. These agreements generally preclude registered representatives from soliciting their clients in the event they move to a new firm. In some instances, they permit the registered representative to send only a letter that provides new contact information. If the proposed rule is implemented, and a registered representative sends the Educational Communication with the contact information, there could be a concern that the Educational Communication might be interpreted as a solicitation. Consequently, we recommend that FINRA add to the Educational Communication a statement that including it with a communication to a client does not make that communication a solicitation.

**D. CONSIDER CLARIFYING “ATTEMPT TO INDUCE”**

The Proposal requires a Recruiting Firm that hires a registered person to provide the Educational Communication when the Recruiting Firm or the registered representative *attempts to induce* a Former Client to transfer assets. More clarification regarding the meaning of the term “*attempt to induce*” would be helpful. LPL suggests that FINRA include a definition of the term in the rule text, and that FINRA clarify whether a letter that simply notifies the Former Client of the registered representative’s new contact information at the Recruiting Firm would constitute an inducement.

**E. CONSIDER MODIFYING THE TIMING OF ONE OF THE DELIVERY REQUIREMENTS**

We recommend extending the time period from three (3) to seven (7) business days to deliver the Educational Communication following an oral conversation. Given the need for internal communications between and among the registered representative and various departments within his/her broker-dealer, extending this time period would facilitate timely compliance with the rule.

We hope that these comments will be helpful. We strongly believe that FINRA Rule 2272 will promote investor protection and result in meaningful disclosures to customers that will help them make informed decisions. We respectfully submit that the recommendations discussed in this letter will enable member firms to comply with the rule in a more efficient manner while also fulfilling the very important purpose of the rule. LPL welcomes engagement with FINRA to discuss these operational topics. If you have any questions regarding this letter or would like to discuss any of these points further, please do not hesitate to contact me.

Sincerely,



David P. Bergers