Exchange's proposal to adopt a BX Options Participant Fee of $500 is equitable and not unfairly discriminatory because the Participant Fee will be assessed uniformly to each BX Options Participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange's proposal to adopt a BX Options Participant Fee of $500 per month does not impose an undue burden on competition because the Exchange would uniformly assess the same Participant Fee to each BX Options Participant. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose Participants. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

calendar month ranging from $1,000 to $6,000 a month.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2015–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–083, and should be submitted on or before January 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–32813 Filed 12–29–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76757; File No. SR–FINRA–2015–057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers)

December 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 2273, which would establish an obligation for a member to deliver an educational communication in connection with member recruitment practices and account transfers. The text of the proposed rule change is available on FINRA's Web site at *http://*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

www.finra.org, at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Representatives who leave their member firm often contact former customers and emphasize the benefits the former customers would experience by transferring their assets to the firm that recruited the registered representative (''recruiting firm'') and maintaining their relationship with the representative. In this situation, the former customer's confidence in and prior experience with the representative may be one of the customer's most important considerations in determining whether to transfer assets to the recruiting firm. However, FINRA is concerned that former customers may not be aware of other important factors to consider in making a decision whether to transfer assets to the recruiting firm, including directs costs that may be incurred. Therefore, to provide former customers with a more complete picture of the potential implications of a decision to transfer assets, the proposed rule change would require delivery of an educational communication by the recruiting firm that highlights key considerations in transferring assets to the recruiting firm, and the direct and indirect impacts of such a transfer on those assets.

FINRA believes that former customers would benefit from receiving a concise, plain-English document that highlights the potential implications of transferring assets. The proposed educational communication is intended to encourage former customers to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to the extent that the customer considers the information important to his or her decision making.

The details of proposed FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers) are set forth below.

Educational Communication

The proposed rule change would require a member that hires or associates with a registered representative to provide to a former customer of the representative, individually, in paper or electronic form, an educational communication prepared by FINRA. The proposed rule change would require delivery of the educational communication when: (1) The member, directly or through a representative, individually contacts a former customer of that representative to transfer assets; or (2) a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the member.[3]

The proposed rule change would define a ''former customer'' as any customer that had a securities account assigned to a registered person at the representative's previous firm. The term ''former customer'' would not include a customer account that meets the definition of an ''institutional account'' pursuant to FINRA Rule 4512(c); provided, however, accounts held by a natural person would not qualify for the institutional account exception.[4]

The proposed educational communication focuses on important considerations for a former customer who is contemplating transferring assets to an account assigned to his or her former representative at the recruiting firm. The educational communication would highlight the following potential implications of transferring assets to the recruiting firm: (1) Whether financial incentives received by the representative may create a conflict of interest; (2) that some assets may not be directly transferrable to the recruiting firm and as a result the customer may incur costs to liquidate and move those assets or account maintenance fees to leave them with his or her current firm; (3) potential costs related to transferring assets to the recruiting firm, including differences in the pricing structure and fees imposed by the customer's current firm and the recruiting firm; and (4) differences in products and services between the customer's current firm and the recruiting firm.

The educational communication is intended to prompt a former customer to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to the extent that the customer considers the information important to his or her decision making.

Requirement To Deliver Educational Communication

FINRA believes that a broad range of communications by a recruiting firm or its registered representative would constitute individualized contact that would trigger the delivery requirement under the proposal. These communications may include, but are not limited to, oral or written communications by the transferring representative: (1) Informing the former customer that he or she is now associated with the recruiting firm, which would include customer communications permitted under the Protocol for Broker Recruiting (''Protocol'');[5] (2) suggesting that the former customer consider transferring his or her assets or account to the recruiting firm; (3) informing the former customer that the recruiting firm may offer better or different products or services; or (4) discussing with the former customer the fee or pricing structure of the recruiting firm.

Furthermore, FINRA would consider oral or written communications to a group of former customers to similarly trigger the requirement to deliver the educational communication under the proposed rule change. These types of oral or written communications by a member, directly or through the representative, to a group of former customers may include, but are not limited to: (1) Mass mailing of information; (2) sending copies of information via email; or (3) automated phone calls or voicemails.

[3] *See* proposed FINRA Rule 2273(a).

[4] *See* proposed FINRA Rule 2273.01 (Definition). FINRA Rule 4512(c) defines the term institutional account to mean the account of: (1) A bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[5] The Protocol was created in 2004 and permits departing representatives to take certain limited customer information with them to a new firm, and solicit those customers at the new firm, without the fear of legal action by their former employer. The Protocol provides that representatives of firms that have signed the Protocol can take client names, addresses, phone numbers, email addresses, and account title information when they change firms, provided they leave a copy of this information, including account numbers, with their branch manager when they resign.

Timing and Means of Delivery of Educational Communication

The proposed rule change would require a member to deliver the educational communication at the time of first individualized contact with a former customer by the member, directly or through the representative, regarding the former customer transferring assets to the member.[6] If such contact is in writing, the proposed rule change would require the educational communication to accompany the written communication. If the contact is by electronic communication, the proposed rule change would permit the member to hyperlink directly to the educational communication.[7]

If the first individualized contact with the former customer is oral, the proposed rule change would require the member or representative to notify the former customer orally that an educational communication that includes important considerations in deciding whether to transfer assets to the member will be provided not later than three business days after the contact. The proposed rule change would require the educational communication be sent within three business days from such oral contact or with any other documentation sent to the former customer related to transferring assets to the member, whichever is earlier.[8]

If the former customer seeks to transfer assets to an account assigned, or to be assigned, to the representative at the member, but no individualized contact with the former customer by the representative or member occurs before the former customer seeks to transfer assets, the proposed rule change would mandate that the member deliver the educational communication to the former customer with the account transfer approval documentation.[9] The educational communication requirement in the proposed rule change would apply for a period of three months following the date that the representative begins employment or associates with the member.[10]

Pursuant to the proposed rule change, the educational communication requirement would not apply when the former customer expressly states that he or she is not interested in transferring assets to the member. If the former customer subsequently decides to transfer assets to the member without further individualized contact within the period of three months following the date that the representative begins employment or associates with the member, then the educational communication would be required to be provided with the account transfer approval documentation.[11]

Format of Educational Communication

To facilitate uniform communication under the proposed rule change and to assist members in providing the proposed communication to former customers of a representative, the proposed rule change would require a member to deliver the proposed educational communication prepared by FINRA to the former customer, individually, in paper or electronic form.[12] The proposed rule change would require members to provide the FINRA-created communication and would not permit members to use an alternative format.[13] FINRA believes that the FINRA-created uniform educational communication will allow members to provide the required communication at a relatively low cost and without significant administrative burdens.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote investor protection by highlighting important conflict and cost considerations of transferring assets and encouraging customers to make further inquiries to reach an informed decision about whether to transfer assets to the recruiting firm. This belief is supported by FINRA's test of the educational communication with a diverse group of retail investors. The investors tested indicated that the educational communication effectively conveyed important and useful information. The investors also indicated that the communication identified issues to consider that they had previously been unaware of and that would be meaningful in making a decision whether to transfer assets to the representative's new firm.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All members would be subject to the proposed rule change, so they would be affected in the same manner, and FINRA has narrowly tailored the rule requirements to minimize the impacts on firms.

FINRA believes that the proposed rule change would protect investors by highlighting the potential implications of transferring assets to the recruiting firm. The proposed educational communication is intended to prompt a former customer to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to the extent that the customer considers the information important to his or her decision making.

FINRA recognizes that a member that hires or associates with a registered person would incur costs to comply with the proposed rule change on an initial and ongoing basis. Members would need to establish and maintain written policies and procedures reasonably designed to ensure compliance with the proposed rule change, including monitoring communications by the transferring representative and other associated persons of the recruiting firm with former retail customers of the representative. The compliance costs would likely vary across members based on a number of factors such as the size of a firm, the extent to which a member hires registered representatives from other firms, and the effectiveness and application of existing procedures to the types of communications that must be monitored under the proposed rule change.

FINRA does not believe that the proposed rule change will impose undue operational costs on members to comply with the educational communication. While FINRA recognizes that there will be some small operational costs to members in complying with the proposed

[6] *See* proposed FINRA Rule 2273(b)(1).

[7] *See* proposed FINRA Rule 2273(b)(1)(A).

[8] *See* proposed FINRA Rule 2273(b)(1)(B).

[9] *See* proposed FINRA Rule 2273(b)(2).

[10] *See* proposed FINRA Rule 2273(b)(3).

[11] *See* proposed FINRA Rule 2273.02 (Express Rejection by Former Customer).

[12] *See* proposed FINRA Rule 2273(a) and Exhibit 3.

[13] *See* proposed FINRA Rule 2273(a).

[14] 15 U.S.C. 78*o*–3(b)(6).

educational communication requirement, FINRA has lessened the cost of compliance by developing a standardized educational communication for use by members that does not require members to make any threshold determinations or provide any additional or customized information to complete the communication. Furthermore, the proposed rule change would permit a member to deliver the educational communication in paper or electronic form thereby giving the member alternative methods of complying with the requirement.

In developing the proposed rule change, FINRA considered several alternatives to the proposed rule change, to ensure that it is narrowly tailored to achieve its purposes described previously without imposing unnecessary costs and burdens on members or resulting in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[15] The proposed rule change addresses many of the concerns noted by commenters in response to the *Notice* 13–02 Proposal and Rule 2243 Proposal.

First, the *Notice* 13–02 Proposal would have required a member that provides, or has agreed to provide, to a representative enhanced compensation in connection with the transfer of securities employment of the representative from another financial services firm to disclose the details, including specific amounts, of such enhanced compensation [16] to any former customer of the representative at the previous firm that is contacted regarding the transfer of the securities employment (or association) of the representative to the recruiting firm, or who seeks to transfer assets, to a broker-dealer account assigned to the representative with the recruiting firm. The revised approach in the Rule 2243 Proposal would have required disclosure of ranges of compensation of $100,000 or more as applied separately to aggregate upfront payments and aggregate potential future payments and affirmative cost and portability statements. In the proposed rule change FINRA has removed the requirement to disclose to former customers the magnitude of recruitment compensation paid to a transferring representative due to the privacy and operational concerns expressed by commenters to the Rule 2243 Proposal. Furthermore, removing the requirement to disclose ranges of compensation also obviates members' need to calculate recruitment compensation to be paid to a transferring representative so as to determine whether the threshold of $100,000 or more in compensation has been reached.

Second, the Rule 2243 Proposal would have required members to report to FINRA information related to significant increases in total compensation over the representative's prior year compensation that would be paid to the representative during the first year at the recruiting firm so that FINRA could assess the impact of these arrangements on a member's and representative's obligations to customers and detect potential sales practices abuses. Consistent with the removal of the requirement to disclose ranges of recruitment compensation paid to a transferring representative, the proposed rule change does not include a reporting obligation. However, FINRA will include potential customer harm resulting from recruitment compensation as part of its broader conflicts management review.

Third, the disclosure requirements in the *Notice* 13–02 Proposal and Rule 2243 Proposal would have applied for a period of one year following the date the representative began employment or associated with the member. The *Notice* 15–19 Proposal proposed that the delivery of the educational communication would apply for six months following the date the representative began employment or associated with the member. In recognition of the typical time frame for communicating with former customers and to lessen any associated operational and supervisory burdens, the proposed rule change provides that the delivery of the educational communication shall apply for three months following the date the representative begins employment or associates with the member.

Fourth, in response to concerns from commenters to the Rule 2243 Proposal about the proposal's competitive implications, operational aspects and the effectiveness of the proposed compensation disclosures, FINRA has instead proposed requiring delivery of an educational communication that highlights key considerations in transferring assets to the recruiting firm, and the direct and indirect impacts of such a transfer on those assets. Moreover, to ensure that former customers receive uniform information and to ease implementation of the proposed rule change, FINRA has created an educational communication for members to use in satisfying the proposed requirements. FINRA believes this approach is more effective than a general disclosure requirement of the fact of additional compensation paid to the representative because the educational communication allows for more context and explanation and is more likely to prompt a discussion with the transferring representative and the customer's current firm.

For these reasons, FINRA believes that the proposed rule change would not burden competition, but, instead, would strengthen FINRA's regulatory structure and provide additional protection to investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Rule 2243 Proposal

In March 2014, FINRA filed a proposal to adopt Rule 2243 to establish disclosure and reporting obligations related to member recruitment practices.[17] The Rule 2243 Proposal imposed two obligations on members: (1) A disclosure obligation to former customers who the recruiting firm attempts to induce to follow a transferring representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation from the recruiting firm. Under the Rule 2243 Proposal, the disclosure obligation would have required a recruiting firm to disclose to a former customer ranges of recruitment compensation that the representative had received or would receive in connection with transferring to the recruiting firm and the basis for that compensation (*e.g.,* asset-based or production-based). The requirement would have applied separately to $100,000 or more of aggregated ''upfront payments'' or aggregated ''potential future payments.'' In addition, the Rule 2243 Proposal would have required disclosure if a former customer would

[15] *See* Item II.C., which references *Regulatory Notice* 13–02 (Jan. 2013) (''*Notice* 13–02 Proposal''), Exchange Act Release No. 71786 (Mar. 24, 2014), 79 FR 17592 (Mar. 28, 2014) (Notice of Filing of File No. SR–FINRA–2014–010) (''Rule 2243 Proposal''), and *Regulatory Notice* 15–19 (May 2015) (''*Notice* 15–19 Proposal'').

[16] In the *Notice* 13–02 Proposal, the term ''enhanced compensation'' was defined as compensation paid in connection with the transfer of securities employment (or association) to the recruiting firm other than the compensation normally paid by the recruiting firm to its established registered persons. Enhanced compensation included but was not limited to signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance, and similar arrangements, paid in connection with the transfer of securities employment (or association) to the recruiting firm.

[17] *See* Rule 2243 Proposal. FINRA considered and responded to the comments to the *Notice* 13–02 Proposal in the proposed rule change for the Rule 2243 Proposal.

incur costs to transfer assets to the recruiting firm (*e.g.,* account termination, transfer or account opening fees) that would not be reimbursed by the recruiting firm and if any of the former customer's assets were not transferrable to the recruiting firm (and associated costs, including taxes, to liquidate and transfer those assets or leave them at the customer's current firm).

FINRA developed a one-page disclosure template for the Rule 2243 Proposal, but allowed members to use an alternative form if it contained substantially similar content. The Rule 2243 Proposal would have required delivery of the disclosures at the time of first individualized contact with a former customer by the transferring representative or recruiting firm. The Rule 2243 Proposal would have required disclosure for one year following the date the representative began employment or associated with the recruiting firm.

With respect to the reporting obligation, the Rule 2243 Proposal would have required a member to report to FINRA if the member reasonably expected the total compensation paid to the transferring representative during the representative's first year of association with the member to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000. FINRA intended to use the information received as a data point in its risk-based examination program.

The SEC received 184 comments on the Rule 2243 Proposal, including 33 unique comments. Commenters to the Rule 2243 Proposal conveyed concerns about the proposal's competitive implications and operational aspects, as well as the effectiveness of the proposed compensation disclosures. On June 20, 2014, FINRA withdrew SR–FINRA–2014–010 to further consider the comments to the Rule 2243 Proposal.[18]

Notice 15–19 Proposal

A revised proposal was published for public comment in *Regulatory Notice* 15–19. FINRA received 27 comment letters in response to the *Notice* 15–19 Proposal. A copy of *Regulatory Notice* 15–19 is attached as Exhibit 2a. Copies of the comment letters received in response to the *Notice* 15–19 Proposal are attached as Exhibit 2c.[19] The comments and FINRA's responses are set forth in detail below.

General Support and Opposition to the Proposal

Eight commenters stated that the *Notice* 15–19 Proposal is an improvement from the Rule 2243 Proposal.[20] Five additional commenters expressed support for a regulatory effort to provide investors with meaningful information upon which to base a decision but did not support all aspects of the *Notice* 15–19 Proposal.[21] Three commenters opposed the *Notice* 15–19 Proposal and instead supported a return to the Rule 2243 Proposal's requirement to provide specific information about any financial incentives received by the representative and costs associated with the former customer transferring assets.[22] One commenter supported requiring disclosure to former customers of enhanced compensation if the representative has been or will be paid for bringing client assets to the recruiting firm or generating new commissions or fee income.[23]

FINRA believes that the proposed rule change (reflected, in part, in the *Notice* 15–19 Proposal) is an effective and efficient alternative to the previous proposal. The proposed rule change eliminates or reduces the privacy and operational concerns raised to the previous proposal, while educating former customers about important considerations to make an informed decision whether to transfer assets to the recruiting firm. Included among those considerations is that the recruiting firm may pay financial incentives to the representative, such as bonuses based on customer assets the representative brings in, incentives for selling proprietary products, and higher commission payouts.

Triggers To Provide the Educational Communication

As proposed in the *Notice* 15–19 Proposal, the requirement to provide the educational communication would have been triggered when: (1) The member, directly or through the recruited registered person, attempted to induce the former customer of that registered person to transfer assets; or (2) the former customer of that registered person, absent inducement, transferred assets to an account assigned, or to be assigned, to the registered person at the member. Commenters opposed basing the requirement to provide the educational communication on any attempt to ''induce'' a former customer to transfer assets to the recruiting firm because they viewed the term as undefined and imprecise, resulting in operational and supervisory challenges for members.[24]

As discussed in greater detail in Item II.A., FINRA believes that a broad range of communications by a recruiting firm, directly or through a representative, with former customers may reasonably be seen as individually contacting the former customer to transfer assets to the recruiting firm and, as such, would trigger the delivery of the educational communication under the proposed rule change. To lessen any potential confusion regarding whether a communication by a member, directly or through the representative, with a former customer was an inducement to transfer assets, FINRA has revised the proposal to remove the reference to ''inducement'' of former customers. FINRA instead proposes to trigger delivery of the educational communication when: (1) The member, directly or through a representative, individually contacts a former customer of that representative to transfer assets; or (2) a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the member.

Some commenters stated that the requirement to provide the communication following the first individualized contact with a former customer would be unworkable as members would need to rely on representatives to report the contacts with former customers.[25] One commenter also stated that the different delivery requirements based on whether there was individualized contact would be unworkable as members would have difficulty delineating between transfers of assets following individualized contact and those occurring absent individualized contact.[26]

The proposed rule change retains the delivery triggers in the *Notice* 15–19 Proposal. FINRA believes that a representative reasonably should know whether an individual had an account assigned to him or her at the representative's prior firm and whether the representative has individually contacted the former customer regarding transferring assets to the recruiting firm. As such, FINRA does not believe the

[18] *See* Exchange Act Rel. No. 72459 (June 20, 2014), 79 FR 36855 (June 30, 2014) (Notice of Withdrawal of File No. SR–FINRA–2014–010).

[19] *See* Exhibit 2b for a list of abbreviations assigned to commenters.

[20] *See* FSR, FSI, CAI, Lincoln, Ameriprise, NAIFA, Janney, and Burns.

[21] *See* SIFMA, Cambridge, RJA, RJFS, and Edward Jones.

[22] *See* Schwab, NASAA, and Hanson McClain.

[23] *See* PIABA.

[24] *See* SIFMA, FSR, LPL, Ameriprise, Wells Fargo, Janney, and HD Vest.

[25] *See* Commonwealth and HD Vest.

[26] *See* Commonwealth.

burdens associated with tracking whether there has been individualized contact with a former customer are unreasonable relative to the value in providing the educational communication to such customers.

Furthermore, FINRA does not believe that setting up policies and procedures to supervise a registered person's communications with former customers presents an unreasonable burden to members. Members already are obligated to supervise representatives' communications with customers and have flexibility to design their supervisory systems. FINRA notes that the commenters did not provide specific data or other support for their contention that the delivery requirements would be unworkable for recruiting firms.

One commenter suggested that FINRA include additional language in the proposed rule that a former customer may transfer absent individualized contact and provided examples of transfers absent individualized contact.[27] FINRA notes that proposed Rule 2273(a) and (b)(2) address the application of the proposed rule to transfers occurring absent individualized contact. Among other things, FINRA would consider a former customer's decision to transfer assets to the recruiting firm in response to a general advertisement or after learning of the representative's transfer from another former customer as examples of transfers to the recruiting firm absent individualized contact.

Timing of Delivery of the Educational Communication

FINRA also received comments regarding the timing of delivery of the educational communication. Some commenters supported requiring the delivery of the educational communication prior to the time that a former customer decides to transfer assets to the recruiting firm to ensure that the former customer has sufficient time to consider and respond to the information in the communication.[28]

However, several commenters suggested that the requirement to deliver the educational communication should be integrated into an existing process, such as including the communication with the account transfer approval documentation, so as to make implementation of the requirement more cost effective and efficient for members.[29] One commenter suggested that the requirement to deliver the educational communication should be integrated into verification letters to customers sent in compliance with Rule 17a–3 under the Exchange Act,[30] while another commenter recommended disclosing any recruitment-related compensation received by the representative in writing to the former customer at the time of the first individualized contact with the former customer.[31]

The proposed rule change retains the requirement that a member deliver the educational communication at the time of first individualized contact with a former customer by the member, directly or through the representative, regarding the former customer transferring assets to the member. FINRA believes requiring delivery of the communication at the time of first individualized contact is more effective than requiring delivery of the communication at or prior to account opening because customers typically have already made the decision to transfer assets by that point in the process. FINRA believes the same problem exists with respect to a verification letter sent in compliance with Rule 17a–3 under the Exchange Act. FINRA does not believe that it is particularly burdensome to require members to include as part of a written communication to former customers a non-customized, FINRA-created educational communication that includes key information for the customer to consider in making a decision to transfer assets to a new firm. In addition, FINRA believes that to be effective, the proposed educational communication should be accessible to the former customer at or shortly after the time the first individualized contact is made by the recruiting firm or the representative.

Finally, for the reasons discussed in more detail above, the proposed rule change no longer mandates specific disclosure of financial incentives received by the representative. As such, the suggestion to require that representatives disclose any recruitment-related compensation received by the representative in writing at the time of the first individualized contact with the former customer is inconsistent with the approach in the proposed rule change to identify important considerations for former customers and prompt further inquiry to the extent any of those considerations are of concern or interest to the customer. Moreover, the suggestion would reintroduce the privacy and operational challenges raised by many commenters to the Rule 2243 Proposal. Accordingly, FINRA declines to include the suggested requirement.

Requirement To Provide Educational Communication Following Oral Contact

Under the proposed rule change (as reflected in the *Notice* 15–19 Proposal), if the first individualized contact with the former customer is oral, the member or representative would have to notify the former customer orally that an educational communication that includes important considerations in deciding whether to transfer assets to the member will be provided not later than three business days after the contact.

Some commenters to the *Notice* 15–19 Proposal proposed changing the delivery requirement to provide the communication not later than three business days after such oral contact to a longer time period (*e.g.,* delivering the communication not later than 3, 7, or 10 business days after such contact).[32] The commenters stated that a three business day period for providing the educational communication would be insufficient and would lead to operational and supervisory challenges for members in complying with the requirement. On the other hand, one commenter stated that providing the educational communication within three business days was too late as many customers will make a determination to transfer assets prior to receiving the communication.[33]

The proposed rule change retains the three business day period proposed in the *Notice* 15–19 Proposal. The commenters who objected to the requirement to provide the communication not later than three business days after individualized contact generally supported instead integrating the delivery of the educational communication with an existing process (*e.g.,* the account transfer approval documentation). As discussed above, FINRA believes requiring delivery of the communication at first individualized contact is more effective than delivering the communication at or prior to account opening because customers typically have already made the decision to transfer assets by that point in the process. FINRA believes that the three business day period gives a representative sufficient time to inform

[27] *See* CAI.

[28] *See* Schwab and PIABA.

[29] *See* SIFMA, FSR, FSI, CAI, Commonwealth, Lincoln, LPL, Ameriprise, Wells Fargo, Janney, and HD Vest.

[30] *See* Leaders Group.

[31] *See* Edward Jones.

[32] *See* SIFMA, FSR, CAI, Cambridge, Leaders Group, Lincoln, LPL, RJA, RJFS, Ameriprise, and HD Vest.

[33] *See* Edward Jones.

the recruiting firm of the former customers who have been contacted and, in turn, for the recruiting firm to send the educational communication to those former customers. FINRA understands that firms frequently send account opening documentation within that time frame to customers that have indicated an interest in opening an account.

One commenter stated that FINRA should clarify that the three business day period is for transmission of the educational communication by the member and not for receipt of the communication by the customer.[34] Proposed Rule 2273(b)(1)(B) expressly provides that the educational communication must be ''sent'' within three business days from oral contact or with any other documentation sent to the former customer related to transferring assets to the member, whichever is earlier.

Duration of Delivery Requirement

The *Notice* 15–19 Proposal would have required the recruiting firm to provide the educational communication to former customers for a period of six months following the date the representative begins employment or associates with the member. The proposal requested comment on whether a different time period should apply.

Some commenters supported shortening the length of the applicable period as communications between a representative and former customers typically occur quickly following the representative's transfer to the recruiting firm. For example, one commenter indicated that six months was too long of a period but did not offer an alternative period.[35] Another commenter proposed shortening the period to 60 days.[36] Another group of commenters proposed shortening the period to 90 days.[37] Other commenters supported extending the time period beyond six months. Two commenters supported extending the period to one year.[38] One commenter supported extending the period beyond six months but did not propose an end date.[39]

Based on feedback from the industry, FINRA believes that the representatives who individually contact former customers to transfer assets typically do so soon after being hired or associating with the recruiting firm. In addition, FINRA recognizes that tracking contacts with former customers may be more difficult as time passes from the date of the representative's hire or association. In recognition of these factors, the proposed rule change provides that the delivery of the educational communication shall apply for three months following the date the representative begins employment or associates with the member. FINRA believes a three-month period will effectively achieve the regulatory objective while lessening the operational and supervisory burdens on firms.

Requirement To Deliver Educational Communication in Certain Contexts

Commenters requested that FINRA clarify the application of the *Notice* 15–19 Proposal to or provide an exemption for circumstances in which the representative is not individually recruited to transfer to a new firm (*e.g.,* when the representative transfers firms as a result of a merger or acquisition).[40] For example, one commenter suggested that members should not be required to deliver the educational communication to former customers with application-way accounts held directly with a product sponsor where the only change is a substitution of the member associated with the account.[41] Similarly, one commenter suggested that the requirement to deliver the communication when there is only a change of broker-dealer of record and no costs to the former customer may cause customer confusion.[42] One commenter supported the inclusion of a statement in the text of the proposed educational communication that in certain instances the decision to transfer firms was made by the representative's employer and not by the representative.[43]

FINRA recognizes that a representative may transfer to a new firm in circumstances where the decision may not be completely volitional (*e.g.,* as a result of a merger or acquisition or due to a firm going out of business). In such cases, depending on the facts and circumstances, the accounts of the representative's customers may be transferred to the new firm via bulk transfer, and, in some cases, customers may receive only a negative response letter regarding the transfer of their accounts to a new firm.[44] While a customer may object to the transfer of his or her account to a new firm via bulk transfer, the customer may be unable to maintain the assets in the account at his or her current firm in their current form or the current firm may not be willing to service the account as it has done so in the past. As such, the considerations set forth in the educational communication do not have the same application in the context of a bulk transfer as they do when a customer has a viable choice between staying at his or her current firm with the same level of products and services or transferring assets to the recruiting firm, with the attendant impacts.

Similarly, a change of broker-dealer of record for a customer's account in the application-way business context typically does not present the same considerations for customers related to costs, portability, and differences in products, services and fees between the firms as in circumstances where a representative individually contacts a former customer to transfer assets to a new firm.

In short, these circumstances do not present the investor protection dimensions that the *Notice* 15–19 Proposal was intended to address. In recognition of the different considerations faced by customers whose accounts may be transferred via bulk transfer or as a result of a change of broker-dealer of record, FINRA proposes to interpret the proposed rule change as not applying to circumstances where a customer's account is proposed to be transferred to a new firm via bulk transfer or due to a change of broker-dealer of record. FINRA will read with interest comments regarding whether the educational communication should apply in such circumstances and the impact of any exclusion from the rule for these circumstances.

Supervisory and Operational Issues

One commenter suggested that FINRA state in the proposed rule or supplementary material to the proposed rule that appropriate supervisory procedures to implement the educational delivery requirement would be deemed to exist if a member were to mandate training, spot checks, and certifications.[45] This suggestion is apparently based on a statement in the *Notice* 15–19 Proposal that, in supervising the educational communication requirement, FINRA believes that firms can implement a system reasonably designed to achieve compliance with the *Notice* 15–19 Proposal by using training, spot checks, certifications, or other measures.

[34] *See* CAI.

[35] *See* Cambridge.

[36] *See* HD Vest.

[37] *See* SIFMA, Commonwealth, RJA, RJFS, Wells Fargo, and Janney.

[38] *See* Schwab and PIABA.

[39] *See* Burns.

[40] *See* SIFMA and FSI.

[41] *See* HD Vest.

[42] *See* Leaders Group.

[43] *See* LPL.

[44] *See, e.g., Regulatory Notice* 02–57 (Sept. 2002) and *Regulatory Notice* 15–22 (June 2015).

[45] *See* CAI.

Training, spot checks, and certifications were used as examples of approaches that might be included in a supervisory system reasonably designed to achieve compliance with the proposed rule. However, because firms vary in size, scope of business and client base, FINRA declines to suggest a one-size-fits-all supervisory system to achieve compliance with the educational communication requirement.

One commenter supported revising the *Notice* 15–19 Proposal to expressly include supervisory procedures for members to adopt to implement the requirement.[46] FINRA notes that FINRA Rule 3110 already requires that members have in place supervisory procedures reasonably designed to achieve compliance with FINRA rules. As such, FINRA is not including a specific requirement within the proposed rule change requiring members to adopt specific supervisory procedures.

Some commenters stated that, even if effective supervisory procedures existed for the educational communication requirement, the training, implementation, and maintenance of supervisory controls related to the *Notice* 15–19 Proposal would present considerable costs to firms.[47] Commenters also stated that, in order to demonstrate compliance with the *Notice* 15–19 Proposal, members would need to keep records related to former customers who have been contacted by the member or representative but who have not yet opened an account with the recruiting firm and that such a recordkeeping system would result in costs to the recruiting firm.[48]

FINRA does not believe that the training, implementation, and maintenance of supervisory controls related to the proposed rule change (as reflected in the *Notice* 15–19 Proposal) impose an unreasonable burden on members. Members already are obligated to supervise representatives' communications with customers and have flexibility to design their supervisory systems. FINRA does not believe that requiring a member to maintain a record of former customers contacted by the member, directly or through the representative, and to deliver the required educational communication would appreciably increase the existing burden on firms. As noted above, commenters did not provide specific data or other support for their contention that establishing supervisory controls related to the *Notice* 15–19 Proposal would present considerable costs to firms.

FINRA believes that the investor protection benefits of providing the important information contained in the educational communication to former customers to inform their decision whether to transfer assets to their representative's new firm are reasonably aligned with any costs that may arise under the proposed rule change.

Customer Affirmation

The *Notice* 15–19 Proposal requested comment on whether the proposed rule should include a requirement that a customer affirm receipt of the educational communication at or before account opening at the recruiting firm. Some commenters did not support requiring customer affirmation of the receipt of the educational communication.[49] Other commenters supported requiring customer affirmation of the receipt of the educational communication.[50]

While some firms may elect to include a customer affirmation requirement as part of their supervisory controls in implementing the proposed rule change, the proposed rule change does not incorporate a customer affirmation requirement. FINRA believes that the requirements to provide the educational communication at the time of first individualized contact with a former customer, to follow up in writing if such contact is oral, and to deliver the disclosures with the account transfer approval documentation when no individual contact is made, will ensure that former customers receive and have an opportunity to review the information in the proposed educational communication before they decide to transfer assets to a recruiting firm. Furthermore, FINRA wishes to avoid adding an additional requirement to the proposed rule that may impede the timely transfer of customer assets between members.

At this time, FINRA does not believe that a customer affirmation is necessary to accomplish the goals of the proposed rule change. FINRA will assess the effectiveness of the educational communication requirement without a customer affirmation requirement following implementation of the proposed rule. If FINRA finds that the proposed educational communication alone is not attracting the attention of customers to influence their decision-making process, then it will reconsider a customer affirmation requirement.

Focus of the Educational Communication

Some commenters indicated that the proposed educational communication is too focused on conflicts of interest that may be created by the financial incentives received by a representative for transferring firms.[51] Some commenters stated that the proposed educational communication puts transferring representatives at a disadvantage and may interject a false sense of distrust between former customers and transferring representatives.[52] One commenter stated that the educational communication runs the risk of creating unnecessary customer confusion or alarm, as former customers may believe that it is their responsibility to police costs and suitability.[53]

FINRA recognizes the business rationales for offering financial incentives and transition assistance to recruit experienced representatives and seeks neither to encourage nor discourage the practice with the proposed rule change. The proposed rule change is intended to highlight a broad range of potential implications of transferring assets to the recruiting firm, and customers can engage in further conversations with the recruiting firm or their representative in areas of personal concern or interest. While the proposed educational communication notes that a former customer may wish to consider whether financial incentives received by the representative may create a conflict of interest, it is not particularly focused on that consideration. The educational communication also notes that the former customer may wish to consider whether: (1) Assets may not be directly transferrable to the recruiting firm and as a result the customer may incur costs to liquidate and move those assets or account maintenance fees to leave them with his or her current firm; (2) potential costs related to transferring assets to the recruiting firm, including differences in the pricing structure and fees imposed between the customer's current firm and the recruiting firm; and (3) differences in products and services between the customer's current firm and the recruiting firm. The educational communication is intended to prompt a former customer to make further inquiries of the transferring representative (and, if necessary, the customer's current firm). Furthermore, to the extent that the former customer is unsure about whether the information

[46] *See* PIABA.

[47] *See* RJA, RJFS, and HD Vest.

[48] *See* Cambridge and HD Vest.

[49] *Id.*

[50] *See* PIABA, NAIFA, and Burns.

[51] *See* RJA, RJFS and NAIFA.

[52] *See* Cambridge, Steiner & Libo, CLM Ventura, Lax & Neville and Janney.

[53] *See* Cambridge.

in the educational communication is applicable to his or her account, FINRA believes that it is reasonable to expect the representative and the customer's current firm to discuss the information and the customer's assets and account with the customer.

One commenter stated that before imposing the educational communication requirement, FINRA should establish that a real or potential conflict of interest exists in every transaction and that there is evidence of systemic problems with the account transfer process or the current disclosure regime to justify the costs associated with the proposed rule change.[54] FINRA disagrees with the commenter's premise. FINRA has identified an important investor protection objective (*i.e.,* that former customers should be made aware of material information to make an informed decision about transferring assets where there may be conflict, cost, and product and service implications). Furthermore, as discussed above, FINRA tested the educational communication with a diverse group of retail investors, who indicated that the educational communication effectively conveyed important and useful information. There is no basis to require that FINRA establish that a real or potential conflict of interest exists in ''every'' transaction or that there are systemic problems with the account transfer process or the current disclosure regime in order to promulgate an informed decision rule or any other type of rule.

This commenter also stated that the discussions of investor testing of, and the economic impact assessment for, the proposed educational communication in the *Notice* 15–19 Proposal were insufficient as they failed to address: (1) Whether any of the information in the communication is material to a former customer's decision to transfer assets to the recruiting firm; (2) how the Protocol [55] may or may not address the issues that the *Notice* 15–19 Proposal is trying to address; and (3) how existing FINRA rules protect former customers from harm.[56]

As discussed above, FINRA tested the educational communication with a diverse group of retail investors, who indicated that the educational communication effectively conveyed important and useful information. Investors also indicated that the communication identified issues to consider that they had previously been unaware of and that would be meaningful in making a decision whether to transfer assets to the representative's new firm. FINRA believes that potential conflicts of interest, portability, costs, including differences in the pricing structure and fees and tax implications due to liquidation of assets, and differences in products and services are material to many former customers' decision whether to transfer assets.[57] FINRA also believes that the educational communication may encourage customers to explore the potential cost of transferring assets, including the fees charged by the prior firm. However, if these considerations are not material to a customer's decision whether to transfer assets to the recruiting firm, the customer may disregard them.

FINRA also notes that the Protocol governs the employment transitions of representatives of signatory firms—such as what information is categorized as confidential and is restricted from being moved from one firm to the other—and does not address the issues that are highlighted in the proposed communication (*e.g.,* the Protocol would not require a representative to discuss differences in products and services between firms with a customer who is considering transferring firms). As such, FINRA believes that the Protocol's focus on employment transitions is easily distinguishable from the intention of the proposed educational communication in educating former customers.

With respect to how existing FINRA rules protect former customers from harm, there is no current rule that requires representatives to inform former customers in a timely manner of the potential implications of transferring assets, so as to allow them to make an informed decision that may have cost and service implications, among others. FINRA believes that the proposed rule change is easily distinguishable from and serves a different purpose than other currently existing FINRA rules.

Length of and Terms in the Educational Communication

Some commenters suggested that the proposed educational communication should be streamlined to reduce its length.[58] FINRA believes that the proposed educational communication strikes an appropriate balance between brevity and providing clear and useful information to former customers.

Some commenters supported replacing the term ''broker'' in the educational communication with a different, more ''modern'' term (*e.g.,* registered representative, registered person, financial advisor, or advisor).[59] FINRA believes ''broker'' is a commonly understood generic term for a registered representative. It is used in the proposed educational communication for readability and brevity purposes, which FINRA believes is important to encourage customers to read the document. FINRA notes that the NYSE Communication also uses the term ''broker.''

Application to the Former Customer's Current Firm

The proposed rule change (as reflected in the *Notice* 15–19 Proposal) would impose the requirement to deliver the educational communication on the recruiting firm only. One commenter to the *Notice* 15–19 Proposal supported requiring a former customer's current firm to deliver the communication, if the current firm attempts to induce the former customer to stay at his or her current firm.[60] This commenter also supported revising the substance of the proposed educational communication to include questions that a former customer might consider if the current firm is soliciting the former customer to stay at the current firm.[61] Similarly, some commenters suggested revising the substance of the proposed educational communication to address incentives that the current firm may offer the customer to stay with the current firm [62] or incentives that employees of the current firm may receive to retain the customer.[63]

With the proposed rule change, FINRA is focused on providing customers impactful information to consider when deciding whether to transfer assets to a representative's new firm, where cost and portability issues are most likely to arise and where certain potential conflicts (*e.g.,* financial incentives to attract new assets) are more pronounced. The proposed educational communication is intended to prompt the customer to ask questions of his or her representative and, if necessary, current firm. While the proposed rule change would not require the current firm to provide the

[54] *See* Lax & Neville.

[55] *See supra* note 5.

[56] *Id.*

[57] FINRA notes that the New York Stock Exchange has published a similar educational communication entitled ''If Your Broker Changes Firms, What Do You Do?'' (''NYSE Communication'') that also highlights these considerations for investors who are considering transferring assets to a representative's new firm.

[58] *See* Leaders Group and NAIFA.

[59] *See* SIFMA, Ameriprise, and Janney.

[60] *See* Lincoln.

[61] *Id.*

[62] *See* CLM Ventura, Lax & Neville and Janney.

[63] *See* PIABA.

educational communication to a customer, the proposed educational communication does note that ''some firms pay financial incentives to retain brokers or customers.'' Furthermore, FINRA notes that requiring the current firm to also provide the educational communication to a customer whose representative has transferred to a new firm would result in the customer receiving multiple copies of the same communication.

Contractual and Legal Considerations

One commenter suggested adding supplementary material to the *Notice* 15–19 Proposal clarifying that the proposed rule would not excuse compliance with applicable privacy, trade secret, or contractual obligations. Some commenters indicated that delivery of the proposed educational communication could be seen as evidence that a representative solicited former customers in violation of contractual restrictions and, as a result, be used as evidence in litigation.[64] Other commenters recommended that FINRA clarify that the proposed rule would govern only the educational communication requirement and should not be used as evidence for any other purpose, including that a former customer was improperly solicited.[65] One commenter suggested that FINRA state that the proposed rule would not affect the ability of firms to use employment agreements to prevent representatives from taking customer information.[66]

One commenter suggested that FINRA confirm that the proposed rule does not require or create a presumption in favor of a member sharing a former customer's information with a transferring representative or the recruiting firm.[67] One commenter stated that FINRA should clarify: (1) How members are supposed to comply with Regulation S–P; and (2) that the proposed rule change would supersede any private contractual restriction on representatives taking customer information.[68] Another commenter supported a code of conduct requirement for member responses to customer inquiries prompted by the educational communication to avoid confusion or litigation.[69]

FINRA does not agree that the proposed rule change would encourage violations of federal or state privacy regulations because it does not require the disclosure of any information related to non-public customer personal information. With respect to commenters' concerns regarding non-compete agreements and the prohibitions in Regulation S–P, FINRA notes that the proposed rule change is not intended to impact any contractual agreement between a representative and his or her former firm or new firm and does not require members to disclose information in a manner inconsistent with Regulation S–P.[70] The proposed rule change assumes that recruiting firms and representatives will act in accordance with the contractual obligations established in employment contracts, state law, and, if applicable, the Protocol.[71] For example, FINRA does not intend for the provision of the educational communication to have any relevance to a determination of whether a representative impermissibly solicited a former customer in breach of a contractual obligation.

Some commenters indicated that, due to privacy agreements or Regulation S–P, representatives may not have information available to answer customer inquiries prompted by the educational communication.[72] One commenter indicated that FINRA should provide guidance that it is permissible for a representative to inform a former customer that specific information may not be available to answer the former customer's question unless the former customer provides his or her account information to the representative.[73] To the extent that a representative or member does not have access to information so as to be able to answer a customer's inquiry, FINRA believes that it is reasonable to expect the representative or member to explain the situation to the customer and detail any information that is needed in order to answer the inquiry. FINRA believes that such a conversation may occur in different contexts outside the scope of the proposed rule change (*e.g.,* when a customer asks his or her representative a question regarding a retirement account or college savings account held outside the representative's firm) and that representatives and members have experience in dealing with these types of conversations.

One commenter stated that the discussions of investor testing of, and the economic impact assessment for, the proposed educational communication in the *Notice* 15–19 Proposal were insufficient as they failed to address costs that may be associated with potential increased litigation related to delivery of the educational communication being seen as impermissible solicitation of former customers or some other contractual or legal violation.[74] As noted above, FINRA does not believe the proposed rule change would, and does not intend the proposed rule change to: (1) Impact any contractual agreement between a representative and his or her former firm or new firm; or (2) require members to disclose information in a manner inconsistent with Regulation S–P. As noted above, to the extent that a firm brings a legal challenge against a representative or his or her new firm, FINRA does not intend for the delivery of the educational communication pursuant to the proposed rule change to have any relevance to determine whether or not a representative or the new firm has engaged in improper solicitation of former customers or has committed some other contractual or legal violation. Further, the information contained in the educational communication is generic, making no reference to any firm or registered representative, and comparable to other public information that may be shared, such as a news article. As such, FINRA believes that the educational communication provides no unique information intended to encourage or discourage transfer of assets.

Exemptions

Some commenters to the *Notice* 15–19 Proposal proposed creating a *de minimis* exemption from the requirement to deliver the educational communication if the representative has received or will receive less than $100,000 of either aggregate upfront payments or aggregate potential future payments in connection with transferring to the recruiting firm.[75] One commenter proposed creating a *de minimis* exemption for members: (1) With 150 or fewer representatives; (2) with no proprietary products in customer accounts; and (3) offering $50,000 or less to representatives in

[64] *See* Cambridge and LPL.

[65] *See* SIFMA and HD Vest.

[66] *See* Schwab.

[67] *See* Edward Jones.

[68] *See* HD Vest.

[69] *See* Lax & Neville.

[70] *See* 17 CFR 248.15(a)(7)(i).

[71] As noted above, the Protocol permits representatives of firms that have signed the Protocol to take client names, addresses, phone numbers, email addresses, and account title information when they change firms, provided they leave a copy of this information, including account numbers, with their branch manager when they resign. *See supra* note 5.

[72] *See* RJA, RJFS, and HD Vest.

[73] *See* Burns.

[74] *See* Lax & Neville.

[75] *See* SIFMA, Schwab, and HD Vest.

connection with transferring to the member.[76]

The proposed rule change does not include a *de minimis* exemption. Unlike the Rule 2243 Proposal, the proposed rule change would not require the calculation and disclosure of ranges of recruitment-related compensation that have been or will be received by a transferring representative. Rather, the proposed educational communication would highlight issues beyond potential conflicts of interest that may be created by the receipt of financial incentives, including issues related to portability, costs, including differences in the pricing structure and fees and tax implications due to liquidation of assets, and differences in products and services. As such, an exemption based on the amount of financial incentives paid to the representative would deprive former customers of the other important considerations. Given its scope and requirements, FINRA does not believe that a *de minimis* exemption is appropriate for the proposed rule change.

Furthermore, a *de minimis* exemption would reintroduce the requirement that a recruiting firm calculate the representative's current and future recruitment-related compensation in order to determine whether the *de minimis* exemption would be available. Commenters to the Rule 2243 Proposal cited several operational challenges to the requirement to calculate recruitment-related compensation.

One commenter proposed creating an exemption from the requirement to deliver the educational communication if none of the issues identified in the communication are applicable to the representative's association with the recruiting firm.[77] FINRA believes that such an exemption would present implementation challenges for members as recruiting firms and representatives may be unable to determine that none of the issues identified in the communication are applicable to the transferring representative or former customer prior to delivering the educational communication to the former customer. Fundamentally, FINRA does not believe circumstances are likely to exist where none of the considerations identified in the educational communication are applicable to the representative's association with the recruiting firm. Accordingly, except as discussed above with respect to bulk transfers and changes in the broker-dealer of record in the application-way business context, FINRA does not intend to create an exception from the requirement to deliver the educational communication.

One commenter suggested creating an exemption from the requirement to deliver the educational communication for independent contractor model firms where, as stated by the commenter, the customers are not viewed as being ''own[ed]'' by the firm.[78] FINRA believes that the potential implications of transferring assets to a recruiting firm highlighted in the communication are equally relevant to customers whose representatives are associated with independent contractor model firms. Accordingly, FINRA declines to create an exemption from the requirement to deliver the educational communication for independent contractor model firms.

Impact on Larger Firms

Two commenters stated that the *Notice* 15–19 Proposal would have a disparate impact on larger firms that are more likely to attract representatives with a significant number of customers.[79] FINRA notes that while larger firms may be more likely have representatives with a significant number of customers, larger firms also typically have greater resources as a result of a large client base. Due to these greater resources, FINRA believes that the proposed rule change does not create an unfair burden for large firms.

Application to Former Customers

The *Notice* 15–19 Proposal requested comment on whether the proposal should apply beyond former customers to all customers recruited by the transferring representative during the six months after transfer. Some commenters did not support expanding the proposed rule to apply beyond former customers as defined in the proposal.[80] One commenter supported expanding the requirement to apply to all customers of a representative, not just former customers.[81] Another commenter supported expanding the requirement to apply beyond former customers, if the educational communication delivery requirement was integrated into the account transfer documentation process.[82]

The proposed rule change would apply to customers that meet the definition of a ''former customer'' under the proposed rule. This would include any customer that had a securities account assigned to a representative at the representative's previous firm and would not include a customer account that meets the definition of an institutional account pursuant to FINRA Rule 4512(c) other than accounts held by any natural person. FINRA believes that former customers that a member or representative individually contacts to transfer assets to a new firm are most impacted in recruitment situations because they have already developed a relationship with the representative and because their assets may be both the basis for the representative's recruitment compensation and subject to potential costs and changes if the customer decides to move those assets to the recruiting firm. FINRA did not extend the application of the proposed rule to non-natural person institutional accounts because it believes that such accounts are more sophisticated in their dealings with representatives and that the proposed educational communication would not have as significant an impact on their decision whether to transfer assets to a new firm.

FINRA-Created Educational Communication

One commenter supported the use of a FINRA-created educational communication in lieu of a member-created communication.[83] Other commenters supported permitting members to alter the educational communication to more closely correspond with each member's specific situation.[84] One commenter supported permitting the educational communication to be integrated into a member's individualized account transfer process provided that the timing requirements of the proposed rule are satisfied and that the content is substantially similar to the content in the FINRA-created communication.[85]

To facilitate members providing the educational communication at a relatively low cost and without significant administrative burden, FINRA has developed an educational communication for members to use to satisfy the requirements of the proposed rule change. To ensure that former customers receive uniform information and to ease implementation of the proposed rule change, FINRA does not propose to permit members to revise the communication or integrate the communication into other documents.

Reporting to FINRA

The proposed rule change would not require a member to report to FINRA

[76] *See* Buckman.

[77] *See* CAI.

[78] *See* American Investors Co.

[79] *See* RJA and RJFS.

[80] *See* Cambridge, NAIFA, and HD Vest.

[81] *See* PIABA.

[82] *See* FSI.

[83] *See* Ameriprise.

[84] *See* SIFMA and HD Vest.

[85] *See* CAI.

significant increases in compensation paid to a representative that has former customers at the beginning of the employment or association of the representative with the member. One commenter to the *Notice* 15–19 Proposal stated that it supported FINRA removing the reporting obligation that was included in the Rule 2243 Proposal.[86] Consistent with the *Notice* 15–19 Proposal, the proposed rule change does not include a reporting obligation. However, FINRA will include potential customer harm resulting from recruitment compensation as part of its broader conflicts management review.

Treatment of Dual-Hatted Persons

One commenter to the *Notice* 15–19 Proposal suggested adding supplementary material to the proposed rule to address scenarios where a representative dually registered as an investment adviser representative and broker-dealer representative transfers to a recruiting firm (*e.g.,* that delivery of the communication may not be required if the representative served as an investment adviser representative and will be associated in the same capacity at the recruiting firm).[87]

The proposed rule change would apply to any registered person that transfers to a member and individually contacts a former customer (*i.e.,* a customer that had a securities account assigned to the registered person at the registered person's previous firm) regarding transferring assets to the firm. The proposed rule change would apply to a registered person dually registered as an investment adviser and broker-dealer who associates with a member firm in both an investment advisory and broker-dealer capacity. The proposed rule change would not apply if the registered person transferred to a non-member firm or associated with a member firm only as an investment adviser representative.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–057 and should be submitted on or before January 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[88]

Brent J. Fields,

Secretary.

[FR Doc. 2015–32816 Filed 12–29–15; 8:45 am]

BILLING CODE 8011–01–P

[86] *See* Commonwealth.

[87] *See* SIFMA.

[88] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76771; File No. SR–BX–2015–082]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASDAQ Last Sale Plus

December 24, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rule 7039 (BX Last Sale and NASDAQ Last Sale Plus Data Feeds) with language regarding NASDAQ Last Sale (''NLS'') Plus (''NLS Plus''), a comprehensive data feed offered by NASDAQ OMX Information LLC[3] that allows data distributors to access the three last sale products offered by each of Nasdaq, Inc.'s three U.S. equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ OMX Information LLC is a subsidiary of Nasdaq, Inc. (formerly, The NASDAQ OMX Group, Inc.), separate and apart from The NASDAQ Stock Market LLC. The primary purpose of NASDAQ OMX Information LLC is to combine publicly available data from the three filed last sale products of the exchange subsidiaries of Nasdaq, Inc. and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public. In that role, the function of NASDAQ OMX Information LLC is analogous to that of other market data vendors, and it has no competitive advantage over other market data vendors; NASDAQ OMX Information LLC performs precisely the same functions as Bloomberg, Thomson Reuters, and other market data vendors.