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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2015 - * 057
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change to adopt FINRA Rule 2273, which would establish an obligation to deliver an educational communication in connection with member recruitment practices and account transfers.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Jeanette Last Name * Wingler
Title * Assistant General Counsel
E-mail * jeanette.wingler@finra.org
Telephone * (202) 728-8013 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/16/2015

By Patrice Gliniecki

(Name *)

(Title *)

Senior Vice President and Deputy General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt FINRA Rule 2273, which would establish an obligation to deliver an educational communication in connection with member recruitment practices and account transfers.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 19, 2014, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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.

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

3. **<u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>**

(a) Purpose

<u>Background</u>

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 who 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.[2]

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.[3]

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2 See proposed FINRA Rule 2273(a).

3 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.

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");[4] (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.

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.[5] 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

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[4] 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.

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

member to hyperlink directly to the educational communication.[6]

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.[7]

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.[8] 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.[9]

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

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6 See proposed FINRA Rule 2273(b)(1)(A).

7 See proposed FINRA Rule 2273(b)(1)(B).

8 See proposed FINRA Rule 2273(b)(2).

9 See proposed FINRA Rule 2273(b)(3).

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.[10]

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.[11] The proposed rule change would require members to provide the FINRA-created communication and would not permit members to use an alternative format.[12] 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.

As noted in Item 2 of this filing, 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.

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10 See proposed FINRA Rule 2273.02 (Express Rejection by Former Customer).

11 See proposed FINRA Rule 2273(a) and Exhibit 3.

12 See proposed FINRA Rule 2273(a).

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] 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.

4. 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

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[13] 15 U.S.C. 78o-3(b)(6).

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 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.[14] 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[15] 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

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[14] See Item 5, which references Regulatory Notice 13-02 (January 2013) ("Notice 13-02 Proposal"), Securities Exchange Act Release No. 71786 (March 24, 2014), 79 FR 17592 (March 28, 2014) (Notice of Filing of File No. SR-FINRA-2014-010) ("Rule 2243 Proposal"), and Regulatory Notice 15-19 (May 2015) ("Notice Proposal").

[15] 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.

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 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 without being a burden on competition.

5. 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.[16] 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 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).

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16 See Securities Exchange Act Release No. 71786 (March 24, 2014), 79 FR 17592 (March 28, 2014) (Notice of Filing of File No. SR-FINRA-2014-010). FINRA considered and responded to the comments to the Notice 13-02 Proposal in the proposed rule change for the Rule 2243 Proposal.

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.[17]

Notice 15-19

The current proposal was published for public comment in Notice 15-19. FINRA received 27 comment letters in response to the proposal. A copy of Notice 15-19 is attached as Exhibit 2a. Copies of the comment letters received in response to Notice 15-

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[17] See Securities 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 are attached as Exhibit 2c.[18] The comments and FINRA's responses are set forth in detail below.

General Support and Opposition to the Proposal

Eight commenters stated that the current proposal is an improvement from the Rule 2243 Proposal.[19] 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 current proposal.[20] Three commenters opposed the current 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.[21] PIABA 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.

FINRA believes that the proposed rule change 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

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

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

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

[21] See Schwab, NASAA and Hanson McClain.

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 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.[22]

As discussed in greater detail in Item 3, 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

22 See SIFMA, FSR, LPL, Ameriprise, Wells Fargo, Janney and HD Vest.

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.[23] Commonwealth 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.

The proposed rule change retains the delivery triggers in the Notice 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 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

[23] See Commonwealth and HD Vest.

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.

CAI suggested that FINRA include additional language in the proposed rule that a former customer may transfer absent individualized contact and provide examples of transfers absent individualized contact. 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.[24]

However, several commenters suggested that the requirement to deliver the educational communication 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.[25]

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[24] See Schwab and PIABA.

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

Leaders Group suggested that the requirement to deliver the educational communication be integrated into verification letters to customers sent in compliance with Rule 17a-3 under the Exchange Act, while Edward Jones 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.

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 by Edward Jones 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 Notice Proposal. Accordingly, FINRA declines to include the suggested requirement.

Requirement to Provide Educational Communication Following Oral Contact

Under the proposed rule change, 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.

Some commenters 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).[26] 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, Edward Jones 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.

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

The proposed rule change retains the three business day period proposed in the Notice 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 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.

CAI stated that FINRA should clarify that the three business day period in the proposed rule change is for transmission of the educational communication by the member and not for receipt of the communication by the customer. 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 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. Cambridge indicated that six months was too long of a period but did not offer an alternative period. HD Vest proposed shortening the period to 60 days. Another group of commenters proposed shortening the period to 90 days.[27] Other commenters supported extending the time period beyond six months. Two commenters supported extending the period to one year.[28] Burns supported extending the period beyond six months but did not propose an end date.

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.

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

[28] See Schwab and PIABA.

Requirement to Deliver Educational Communication in Certain Contexts

Commenters requested that FINRA clarify the application of the proposed rule change 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).[29] HD Vest 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. Similarly, Leaders Group 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. LPL 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.

FINRA recognizes that a representative may transfer to a new member 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 member via bulk transfer, and, in some cases, customers may receive only a negative response letter regarding the transfer of their accounts to a new member.[30] While a customer may object to the transfer of his or her account to a new member via bulk transfer, the customer may be unable to maintain the assets in the

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29 See SIFMA and FSI.

30 See, e.g., Regulatory Notice 02-57 (September 2002) and Regulatory Notice 15-22 (June 2015).

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, differences in products and services and fees between the firms as in circumstances where a representative individually contacts a former customer to transfer assets to a new member.

In short, these circumstances do not present the investor protection dimensions that the proposed rule change 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 member 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

CAI 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. This suggestion is apparently based on a statement in the Notice Proposal that, in supervising the educational communication requirement, FINRA believes that firms can implement a system reasonably designed to achieve compliance with the proposed rule change by using training, spot checks, certifications or other measures. 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.

PIABA supported revising the proposed rule change to expressly include supervisory procedures for members to adopt to implement the requirement. 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 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 proposed rule change would present considerable costs to firms.[31] Commenters also stated that, in order to demonstrate compliance with the proposed rule change, members would need to keep records related to former customers who have been contacted by the member or representative but who

31 See RJA, RJFS and HD Vest.

have not yet opened an account with the recruiting firm and that such a recordkeeping system would result in costs to the recruiting firm.[32]

FINRA does not believe that the training, implementation and maintenance of supervisory controls related to the proposed rule change 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 delivery of 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 proposed rule change would present considerable costs to firms.

FINRA believes that the investor protection benefits of providing this important information 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 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.[33] Other

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32 See Cambridge and HD Vest.

33 See Cambridge and HD Vest.

commenters supported requiring customer affirmation of the receipt of the educational communication.[34]

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.

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[34] See PIABA, NAIFA and Burns.

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.[35] 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.[36] Cambridge 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.

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

35 See RJA, RJFS and NAIFA.

36 See Cambridge, Steiner & Libo, CLM Ventura, Lax & Neville and Janney.

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 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.

Lax & Neville 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. 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.

Lax & Neville also stated that the discussions of investor testing of and the economic impact assessment for the proposed educational communication in the Notice 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 of transfer assets to the recruiting firm; (2) how the Protocol may or may not address the issues that the proposed rule change is trying to address; and (3) how existing FINRA rules protect former customers from harm.

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.[37] FINRA also believes that the educational communication may encourage the customers to explore the potential cost of transferring assets, including the fees charged by the prior firm. However, if these

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[37] 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.

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.[38] FINRA believes that the proposed educational communication strikes an appropriate balance between brevity and providing clear and useful information to former customers.

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[38] See Leaders Group and NAIFA.

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).[39] 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 would impose the requirement to deliver the educational communication on the recruiting firm only. Lincoln 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. Lincoln 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. 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[40] or incentives that employees of the current firm may receive to retain the customer.[41]

With the proposed rule change, FINRA is focused on providing customers impactful information to consider when deciding whether to transfer assets to a

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39 See SIFMA, Ameriprise and Janney.

40 See CLM Ventura, Lax & Neville and Janney.

41 See PIABA.

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 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

Edward Jones suggested adding supplementary material to the proposed rule 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.[42] Other commenters recommended that FINRA clarify that the proposed rule change 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.[43] Schwab suggested that FINRA state that the proposed rule

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42 See Cambridge and LPL.

43 See SIFMA and HD Vest.

change would not affect the ability of firms to use employment agreements to prevent representatives from taking customer information.

Edward Jones suggested that FINRA confirm that the proposed rule change 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. HD Vest 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. Lax & Neville supported a code of conduct requirement for member responses to customer inquiries prompted by the educational communication to avoid confusion or litigation.

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.[44] 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.[45] For example, FINRA

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44 See 17 CFR § 248.15(a)(7)(i).

45 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

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.[46] Burns 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. 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.

Lax & Neville stated that the discussions of investor testing of and the economic impact assessment for the proposed educational communication in the Notice Proposal were insufficient as they failed to address costs that may be associated with potential

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this information, including account numbers, with their branch manager when they resign.

46 See RJA, RJFS and HD Vest.

increased litigation related to delivery of the educational communication being seen as impermissible solicitation of former customers or some other contractual or legal violation. As noted above, FINRA does not believe 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 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.[47] Buckman proposed creating a *de minimis* exemption for members: (1) with 150 or fewer

[47] See SIFMA, Schwab and HD Vest.

representatives; (2) with no proprietary products in customer accounts; and (3) offering $50,000 or less to representatives in connection with transferring to the member.

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.

CAI 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. 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

American Investors Co. 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. 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 proposal would have a disparate impact on larger firms that are more likely to attract representatives with a significant number of customers.[48] FINRA notes that while larger firms may be more likely have representatives with a significant number of customers, larger firms also typically have

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48 See RJA and RJFS.

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 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 change to apply beyond former customers as defined in the proposal.[49] PIABA supported expanding the requirement to apply to all customers of a representative, not just former customers. FSI supported expanding the requirement to apply beyond former customers, if the educational communication delivery requirement was integrated into the account transfer documentation process.

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

49 See Cambridge, NAIFA and HD Vest.

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

Ameriprise supported the use of a FINRA-created educational communication in lieu of a member-created communication. Other commenters supported permitting members to alter the educational communication to more closely correspond with each member's specific situation.[50] CAI 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 change are satisfied and that the content is substantially similar to the content in the FINRA-created communication.

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 significant increases in compensation paid to a representative that has former customers

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50 See SIFMA and HD Vest.

at the beginning of the employment or association of the representative with the member. Commonwealth stated that it supported FINRA removing the reporting obligation that was required in the Rule 2243 Proposal. Consistent with the Notice 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

SIFMA 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).

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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[51]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 15-19 (May 2015).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 15-19.

Exhibit 2d. A copy of the Rule 2243 Proposal's Form 19b-4.

Exhibit 2e. Regulatory Notice 13-02 (January 2013).

Exhibit 3. Educational Communication.

Exhibit 5. Text of proposed rule change.

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[51] 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-   ; 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)

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

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

[2] 17 CFR 240.19b-4.

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 who 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

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3 See proposed FINRA Rule 2273(a).

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.

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[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.

<u>Requirement to Deliver Educational Communication</u>

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.

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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

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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).

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

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[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.

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

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

[14] 15 U.S.C. 78o-3(b)(6).

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 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

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

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

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[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.

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 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 without being a burden on competition.

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-

[17] See Securities Exchange Act Release No. 71786 (March 24, 2014), 79 FR 17592 (March 28, 2014) (Notice of Filing of File No. SR-FINRA-2014-010). FINRA considered and responded to the comments to the Notice 13-02 Proposal in the proposed rule change for the Rule 2243 Proposal.

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 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

The current proposal was published for public comment in Notice 15-19. FINRA received 27 comment letters in response to the proposal. A copy of Notice 15-19 is attached as Exhibit 2a. Copies of the comment letters received in response to Notice 15-19 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 current 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 current proposal.[21] Three commenters opposed the current 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] PIABA supported requiring disclosure to former customers of enhanced compensation if

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18 See Securities 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.

the representative has been or will be paid for bringing client assets to the recruiting firm or generating new commissions or fee income.

FINRA believes that the proposed rule change 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 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.[23]

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

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23 See SIFMA, FSR, LPL, Ameriprise, Wells Fargo, Janney and HD Vest.

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.[24] Commonwealth 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.

The proposed rule change retains the delivery triggers in the Notice 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

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[24] See Commonwealth and HD Vest.

assets to the recruiting firm. As such, FINRA does not believe the 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.

CAI suggested that FINRA include additional language in the proposed rule that a former customer may transfer absent individualized contact and provide examples of transfers absent individualized contact. 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.

<u>Timing of Delivery of the Educational Communication</u>

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.[25]

However, several commenters suggested that the requirement to deliver the educational communication 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.[26] Leaders Group suggested that the requirement to deliver the educational communication be integrated into verification letters to customers sent in compliance with Rule 17a-3 under the Exchange Act, while Edward Jones 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.

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

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25 See Schwab and PIABA.

26 See SIFMA, FSR, FSI, CAI, Commonwealth, Lincoln, LPL, Ameriprise, Wells Fargo, Janney and HD Vest.

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 by Edward Jones 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 Notice Proposal. Accordingly, FINRA declines to include the suggested requirement.

Requirement to Provide Educational Communication Following Oral Contact

Under the proposed rule change, 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.

Some commenters 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).[27] 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, Edward Jones 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.

The proposed rule change retains the three business day period proposed in the Notice 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 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.

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27 See SIFMA, FSR, CAI, Cambridge, Leaders Group, Lincoln, LPL, RJA, RJFS, Ameriprise and HD Vest.

CAI stated that FINRA should clarify that the three business day period in the proposed rule change is for transmission of the educational communication by the member and not for receipt of the communication by the customer. 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 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. Cambridge indicated that six months was too long of a period but did not offer an alternative period. HD Vest proposed shortening the period to 60 days. Another group of commenters proposed shortening the period to 90 days.[28] Other commenters supported extending the time period beyond six months. Two commenters supported extending the period to one year.[29] Burns supported extending the period beyond six months but did not propose an end date.

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

[29] See Schwab and PIABA.

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 proposed rule change 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).[30] HD Vest 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. Similarly, Leaders Group 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. LPL supported the inclusion of a statement in the text of the proposed

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30 See SIFMA and FSI.

educational communication that in certain instances the decision to transfer firms was made by the representative's employer and not by the representative.

FINRA recognizes that a representative may transfer to a new member 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 member via bulk transfer, and, in some cases, customers may receive only a negative response letter regarding the transfer of their accounts to a new member.[31] While a customer may object to the transfer of his or her account to a new member 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, differences in products and services and fees between the firms as in circumstances where a representative individually contacts a former customer to transfer assets to a new member.

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[31] See, e.g., Regulatory Notice 02-57 (September 2002) and Regulatory Notice 15-22 (June 2015).

In short, these circumstances do not present the investor protection dimensions that the proposed rule change 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 member 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

CAI 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. This suggestion is apparently based on a statement in the Notice Proposal that, in supervising the educational communication requirement, FINRA believes that firms can implement a system reasonably designed to achieve compliance with the proposed rule change by using training, spot checks, certifications or other measures. 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.

PIABA supported revising the proposed rule change to expressly include supervisory procedures for members to adopt to implement the requirement. 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 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 proposed rule change would present considerable costs to firms.[32] Commenters also stated that, in order to demonstrate compliance with the proposed rule change, 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.[33]

FINRA does not believe that the training, implementation and maintenance of supervisory controls related to the proposed rule change 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 delivery of the required educational communication would appreciably increase the existing

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32 See RJA, RJFS and HD Vest.

33 See Cambridge and HD Vest.

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 proposed rule change would present considerable costs to firms.

FINRA believes that the investor protection benefits of providing this important information 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 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.[34] Other commenters supported requiring customer affirmation of the receipt of the educational communication.[35]

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

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34 See Cambridge and HD Vest.

35 See PIABA, NAIFA and Burns.

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.[36] 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.[37] Cambridge 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.

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36 See RJA, RJFS and NAIFA.

37 See Cambridge, Steiner & Libo, CLM Ventura, Lax & Neville and Janney.

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 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.

Lax & Neville 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. 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.

Lax & Neville also stated that the discussions of investor testing of and the economic impact assessment for the proposed educational communication in the Notice 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 of transfer assets to the recruiting firm; (2) how the Protocol may or may not address the issues that the proposed rule change is trying to address; and (3) how existing FINRA rules protect former customers from harm.

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.[38] FINRA also believes that the educational communication may encourage the 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.

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38 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.

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.[39] 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).[40] 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 would impose the requirement to deliver the educational communication on the recruiting firm only. Lincoln supported requiring a

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39 See Leaders Group and NAIFA.

40 See SIFMA, Ameriprise and Janney.

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. Lincoln 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. 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[41] or incentives that employees of the current firm may receive to retain the customer.[42]

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 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.

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41 See CLM Ventura, Lax & Neville and Janney.

42 See PIABA.

Contractual and Legal Considerations

Edward Jones suggested adding supplementary material to the proposed rule 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.[43] Other commenters recommended that FINRA clarify that the proposed rule change 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.[44] Schwab suggested that FINRA state that the proposed rule change would not affect the ability of firms to use employment agreements to prevent representatives from taking customer information.

Edward Jones suggested that FINRA confirm that the proposed rule change 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. HD Vest 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. Lax & Neville supported a code of conduct requirement for member responses to customer inquiries prompted by the educational communication to avoid confusion or litigation.

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43 See Cambridge and LPL.

44 See SIFMA and HD Vest.

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.[45] 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.[46] 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.[47] Burns 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

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45 See 17 CFR § 248.15(a)(7)(i).

46 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.

47 See RJA, RJFS and HD Vest.

unless the former customer provides his or her account information to the representative. 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.

Lax & Neville stated that the discussions of investor testing of and the economic impact assessment for the proposed educational communication in the Notice 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. As noted above, FINRA does not believe 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 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.[48] Buckman 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 connection with transferring to the member.

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

[48] See SIFMA, Schwab and HD Vest.

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.

CAI 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. 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

American Investors Co. 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. 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 proposal would have a disparate impact on larger firms that are more likely to attract representatives with a significant number of customers.[49] 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 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 change to apply beyond former customers as defined in the proposal.[50] PIABA supported expanding the requirement to apply to all customers of a representative, not just former customers. FSI supported expanding the requirement to

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49 See RJA and RJFS.

50 See Cambridge, NAIFA and HD Vest.

apply beyond former customers, if the educational communication delivery requirement was integrated into the account transfer documentation process.

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

Ameriprise supported the use of a FINRA-created educational communication in lieu of a member-created communication. Other commenters supported permitting members to alter the educational communication to more closely correspond with each member's specific situation.[51] CAI supported permitting the educational communication

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51 See SIFMA and HD Vest.

to be integrated into a member's individualized account transfer process provided that the timing requirements of the proposed rule change are satisfied and that the content is substantially similar to the content in the FINRA-created communication.

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 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. Commonwealth stated that it supported FINRA removing the reporting obligation that was required in the Rule 2243 Proposal. Consistent with the Notice 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

SIFMA 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).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-057on 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 e-mail 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 website (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 website 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 a.m. and 3 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 [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Robert W. Errett
Deputy Secretary

[52] 17 CFR 200.30-3(a)(12).

Regulatory Notice 15-19

Recruitment Practices

FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Comment Period Expires: July 13, 2015

May 2015

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

Key Topics
- Conflicts of Interest
- Customer Account Transfers
- Disclosure

Referenced Rules & Notices
- FINRA Rule 4512

Executive Summary

FINRA seeks comment on a proposed rule that would require a member firm that hires or associates with a registered representative (recruiting firm) to provide an educational communication to former retail customers who the member, directly or through the transferring representative, attempts to induce to transfer assets to the recruiting firm or who choose to transfer assets to the recruiting firm. The educational communication would highlight the potential implications of transferring assets to the recruiting firm and suggest questions a customer may want to ask to make an informed decision. The recruiting firm would be required to provide the educational communication at or shortly after the time of first contact with a former retail customer regarding the transfer of assets to the recruiting firm.

The proposed rule text is available as Attachment A. The proposed educational communication is available as Attachment B.

Questions regarding this *Notice* should be directed to:

- Philip Shaikun, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8451; or
- Jeanette Wingler, Assistant General Counsel, OGC, at (202) 728-8013.

Financial Industry Regulatory Authority

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by July 13, 2015.

Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[1]

Before becoming effective, the proposed rule change must be authorized for filing with Securities and Exchange Commission (SEC) by the FINRA Board of Governors and must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background & Discussion

FINRA remains concerned that retail customers may not be aware of important factors to consider in making an informed decision whether to transfer assets to their transferring registered representative's new firm. Therefore, to provide former customers[3] with a more complete picture of the potential implications of a decision to transfer assets to a new firm, FINRA is requesting comment on a proposed rule to require 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.

Prior Proposal

In developing the proposed rule, FINRA considered the comments received in response to the initial proposal filed with the SEC in March 2014.[4] The initial proposal included two components: (1) a disclosure obligation to former retail customers who the recruiting firm attempts to induce to follow a transferring registered representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation. The disclosure obligation would have required a member recruiting firm to disclose to former customers ranges of recruitment compensation that the representative has received or will receive in connection with moving firms and the basis for that compensation (*e.g.*, asset-based or production-based). In addition, the initial proposal would have required disclosure if a former customer would incur costs to transfer assets to the member firm that would not be reimbursed by the member firm and if any of the former customer's assets were not transferrable to the recruiting firm. The initial proposal would have required disclosure for one year following the date the registered representative began employment or associated with the recruiting firm.

Commenters to the initial proposal conveyed concerns about the proposal's competitive implications and operational aspects, as well as the effectiveness of the proposed compensation disclosures.[5] In June 2014, FINRA withdrew the initial proposal to further consider the comments.[6]

Revised Proposal

FINRA requests comment on a proposed rule that would require delivery of a FINRA-created educational communication focused on key considerations for a customer who is contemplating transferring assets to the recruiting firm.[7]

Content of Communication

The educational communication would highlight the potential implications of transferring assets to the recruiting firm and suggest questions the customer may want to ask to make an informed decision regarding: (1) whether financial incentives received by the representative may create a conflict of interest; (2) assets that 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 inactivity 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 between 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.[8] 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.

Delivery of Communication

The proposed rule would require the educational communication to be provided at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm. If the contact is in writing, the educational communication must accompany the written communication. If the contact is by electronic communication, the recruiting firm may hyperlink directly to the educational communication. If the first contact is oral, the educational communication must be sent to the customer within three business days or with any other communication sent by the recruiting firm to the former customer in connection with a potential transfer of assets, whichever is earlier. In addition, if the first contact is oral, the recruiting firm or representative must inform the former customer that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm.

The proposed rule further would require the educational communication to be provided to a former customer who seeks to transfer assets to an account assigned, or to be assigned, to the representative at the recruiting firm absent contact (*e.g.*, where a customer decides to transfer assets after learning from a general announcement or other sources that his or her registered representative has changed firms). In those circumstances, the communication must be included with the account transfer approval documentation. Although the proposal does not specify supervisory procedures, FINRA expects that firms can implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures.

The requirement to provide the communication would continue to apply for six months following the date that the registered representative begins employment or associates with the recruiting firm.

The requirement to provide the communication would not apply when the former customer who the member or registered representative attempts to induce to transfer assets expressly states that he or she is not interested in transferring assets to the recruiting firm. If the former customer subsequently decides to transfer assets to the recruiting firm without further individualized contact within the period of six months following the date the registered representative begins employment or associates with the member, then delivery of the communication with the account transfer approval documentation is required.

Reporting to FINRA

The proposed rule does not include the reporting obligation to FINRA that was in the initial proposal. FINRA will instead consider potential customer harm resulting from recruitment compensation as part of its broader conflicts management review.

FINRA believes the proposal is an effective and efficient alternative to the initial proposal that would achieve the regulatory objective of informing decisions by retail customers whether to transfer assets to the recruiting firm, while reducing the direct costs on firms to provide the educational communication and the operational challenges of the initial proposal. In place of mandating disclosure of the magnitude of recruitment compensation paid, the proposal would highlight in the educational communication that firms may pay financial incentives to recruit or retain representatives and encourage retail investors to consider whether the incentives may impact the advice they receive. FINRA also considered, as some commenters suggested, a general disclosure requirement of the fact of additional compensation received by a transferring representative. However, FINRA believes the revised proposal is a more effective approach; the educational communication allows for more context and explanation about financial incentives and is more likely to prompt a discussion with the transferring representative or current firm.

Investor Testing

FINRA tested the educational communication with a diverse group of retail investors. In general, the investors 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.

Economic Impacts

The proposed rule is intended to provide investors with relevant information to make an informed decision whether to transfer assets to their representative's new firm. FINRA believes the proposed rule would enhance investor protection by alerting retail customers to important considerations that may impact their costs and investment objectives and performance. FINRA seeks comment on the usefulness of such a disclosure to a representative's former retail customers.

FINRA recognizes that a member firm that hires or associates with a registered person would incur costs to comply with the proposed rules on an initial and ongoing basis. Member firms would need to establish and maintain written policies and procedures reasonably designed to ensure compliance with the proposed rule, including monitoring communications by the transferring representative and other associated persons of the recruiting firm with former retail clients of the representative. The compliance costs would likely vary across member firms based on a number of factors such as the size of a firm, the extent a firm 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 proposal. FINRA seeks comment about the specific sources of these costs, their magnitude and how the costs might differ with a firm's size, business model and other relevant factors.

Request for Comment

In addition to generally requesting comments, FINRA specifically requests comment regarding whether the proposed rule should:

1. require any additional or alternative information be included in the educational communication;
2. include a requirement that a customer affirm receipt of the educational communication at or before account opening at the recruiting firm;
3. apply beyond former retail customers to all customers recruited by or assigned to the transferring representative during the six months after transfer to the recruiting firm; or
4. apply to a time period different from the proposed six months following the date the registered representative associates with the recruiting firm.

FINRA also specifically requests comments on the economic impact and expected beneficial results of the proposed rule.

5. What direct costs for the recruiting firm will result from the proposed rule? How do these costs relate to a firm's size, business model or other relevant characteristics?
6. What indirect costs will arise for the member recruiting firm or its transferring representatives? How do these costs relate to a firm's size, business model or other relevant characteristics?
7. What benefits would result for individual investors and their agents? How extensive are these benefits?
8. Are the costs imposed by the rule warranted by the potential benefit of the education communication to investors?
9. Is the proposed rule well designed to inform investors regarding the potential conflicts of interest and the direct and indirect impacts of transferring assets to a new firm?
10. How will the rule change business practices and competition among firms? Will these impacts differently affect small or specialized broker-dealers?

We request quantified comments where possible.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.

2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

3. The proposed rule would define the term "former customer" to mean any customer that had a securities account assigned to a registered person at the registered person's previous firm. The term shall not include an account of a non-natural person that meets the definition of an institutional account pursuant to FINRA Rule 4512(c). FINRA Rule 4512(c) defines 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 person (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

4. *See* Securities Exchange Act Rel. No. 71786 (Mar. 24, 2014), 79 FR 17592 (Mar. 28, 2014) (SR-FINRA-2014-010).

5. *See* the SEC's website for a list of commenters to the initial proposal.

6. *See* Securities Exchange Act Rel. No. 72459 (June 30, 2014), 79 FR 36855 (June 30, 2014) (SR-FINRA-2014-010).

7. The text of the proposed rule is set forth in Attachment A.

8. *See* Attachment B.

Attachment A

Text of Proposed New FINRA Rule

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2272. Educational Communication Related to Recruitment Practices and Account Transfers

(a) Educational Communication Delivery Requirement

A member that hires or associates with a registered person shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, attempts to induce the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent inducement, transfers assets to an account assigned, or to be assigned, to the registered person at the member.

(b) Means and Timing of Delivery

(1) A member shall deliver the communication in paragraph (a) at the time of first individualized contact with a former customer by the registered person or the member that attempts to induce the former customer to transfer assets to the member.

(A) If the contact is in writing, the written communication required in paragraph (a) must accompany the written communication. If the contact is by electronic communication, the member may hyperlink directly to the educational communication.

(B) If the contact is oral, the member or registered person must 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 educational communication must 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.

(2) If a former customer attempts to transfer assets to an account assigned, or to be assigned, to the registered person at the member, but no individualized contact with the former customer or inducement by the registered person or member occurs before the former customer seeks to transfer assets, the member shall deliver the educational communication in paragraph (a) to the former customer with the account transfer approval documentation.

(3) The delivery of the communication required by paragraph (a) shall apply for a period of six months following the date the registered person begins employment or associates with the member.

• • • Supplementary Material:---------------

.01 Definition. For the purpose of this Rule, the term "former customer" shall mean any customer that had a securities account assigned to a registered person at the registered person's previous firm. This term shall not include an account of a non-natural person that meets the definition of an institutional account pursuant to Rule 4512(c).

.02 Express Rejection by Former Customer. The requirement in paragraph (a) shall not apply when the former customer who the member, directly or through that registered person, attempts to induce to transfer assets 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 six months following the date the registered person begins employment or associates with the member, then the requirements of paragraph (b)(2) shall apply.

* * * * *

Attachment B

FINRA
Financial Industry Regulatory Authority

Issues to consider when your broker changes firms

You're receiving this notice because your broker has changed firms. If you're thinking about whether to follow your broker or stay with your current firm, it's a good idea to examine key issues that will help you make an informed decision.

A good relationship with your broker is surely valuable to you, but it's not the only factor in determining what's in your best interest. Before making a final decision, talk to your broker or someone at your current firm about the following questions, and make sure you're comfortable with the answers.

Could financial incentives create a conflict of interest for your broker?
In general, you should discuss the reasons your broker decided to change firms. Some firms pay brokers financial incentives when they join, which could include bonuses based on customer assets the broker brings in, incentives for selling in-house products or a higher share of commissions. Similarly, some firms pay financial incentives to retain brokers or customers. While there's nothing wrong with these incentives in either case, they can create a conflict of interest for the broker. Whether you stay or go, you should carefully consider whether your broker's advice is aligned with your investment strategy and goals.

Can you transfer all your holdings to the new firm? What are the implications and costs if you can't?
Some products, such as certain mutual funds and annuities, may not be transferable. If that's the case, you'll face an additional decision if you follow your broker to the new firm: whether to liquidate the non-transferable holdings or keep just these holdings at your current firm. Either way, there could be costs to you, such as fees or taxes if you liquidate, or different service fees if you leave some assets at the current firm. Your broker should be able to explain the implications and costs of each scenario.

Continued on reverse

What costs will you pay—both in the short term and ongoing—if you change firms?

In addition to liquidation fees or taxes if you sell non-transferable assets, you may have to pay account termination or transfer fees if you close your current account, or account opening fees at the new firm. (Even if the new firm waives its fees as an incentive to transfer, that wouldn't reduce any transfer or closure costs at your current firm.) Moving forward, the new firm may have a different pricing structure for maintaining your account or making transactions (such as fee-based instead of commissions, or vice versa), which could increase or lower your account costs. Your broker should be able to explain the pricing structure of the new firm and how your ongoing costs would compare.

How do the products at the new firm compare with your current firm?

Of course, not all firms offer the same products. There may be some types of investments you've purchased in the past or are considering for the future that aren't available at the new firm.

If that happens, you should feel comfortable with the products they offer as alternatives. If you tend to keep a lot of cash in your account, ask what investment vehicles are available at the new firm for the cash sweep account and whether the interest rate would have an effect on your return.

What level of service will you have?

Whether you follow your broker to the new firm or choose another broker at your current firm, consider whether you'll have access to the types of service, support and online resources that meet your needs.

EXHIBIT 2b

Alphabetical List of Written Comments
Regulatory Notice 15-19

1. Ameriprise Financial Services, Inc. (July 13, 2015) ("Ameriprise")
2. Buckman, Buckman, & Reid (July 8, 2015) ("Buckman")
3. Burns, Brent (July 14, 2015) ("Burns")
4. Cambridge Investment Research (July 13, 2015) ("Cambridge")
5. Charles Schwab & Co., Inc. (July 13, 2015) ("Schwab")
6. CLM Ventura, LLC (May 31, 2015) ("CLM Ventura")
7. Cochran, Nick of American Investors Co. (July 8, 2015) ("American Investors Co.")
8. Committee of Annuity Insurers (July 13, 2015) ("CAI")
9. Commonwealth Financial Network (July 13, 2015) ("Commonwealth")
10. Financial Services Institute (July 13, 2015) ("FSI")
11. Financial Services Roundtable (July 13, 2015) ("FSR")
12. Hanson McClain Securities (July 6, 2015) ("Hanson McClain")
13. HD Vest Financial Service (July 24, 2015) ("HD Vest")
14. Janney Montgomery Scott LLC (July 10, 2015) ("Janney")
15. Jones, Edward (July 17, 2015) ("Edward Jones")
16. Lax & Neville LLP (July 13, 2015) ("Lax & Neville")
17. Lincoln Financial Network (July 13, 2015) ("Lincoln")
18. LPL Financial LLC (July 13, 2015) ("LPL")
19. NAIFA (July 2, 2015) ("NAIFA")
20. NASAA (July 13, 2015) ("NASAA")
21. Public Investors Arbitration Bar Association (July 13, 2015) ("PIABA")

22. Raymond James & Associates, Inc. (July 14, 2015) ("RJA")

23. Raymond James Financial Services, Inc. (July 13, 2015) ("RJFS")

24. SIFMA (July 13, 2015) ("SIFMA")

25. Steiner & Libo (July 13, 2015) ("Steiner & Libo")

26. The Leaders Group, Inc. (July 13, 2015) ("Leaders Group")

27. Wells Fargo Advisors, LLC (July 13, 2015) ("Wells Fargo")

Ameriprise Financial Services, Inc.
Ameriprise Financial Center
Minneapolis, MN 55474

Ameriprise Financial

July 13, 2015

By Electronic Mail to pubcom@finra.org

Marie E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington D.C. 20006-1506

Re: FINRA Regulatory Notice 15-19 (Educational Communication to Customers of Transferring Representative)

Dear Ms. Asquith:

Ameriprise Financial Services, Inc. ("Ameriprise") welcomes the opportunity to comment on FINRA's Regulatory Notice 15-19 and accompanying rule proposal ("Proposed Rule" or "Rule") concerning the delivery of a FINRA created educational communication ("Educational Communication") to customers of a transferring representative. We appreciate the thoughtful approach that FINRA has taken with respect to the rulemaking process, and the careful consideration given to comments submitted about the prior proposal (FINRA Proposed Rule 2243). Ameriprise also commends FINRA for significantly revising the prior proposal in recognition of these comments to now provide for the delivery of an Educational Communication to former customers of the transferring representative. We believe this approach strikes the right balance between informing the customer and respecting advisor privacy.

In light of these changes, Ameriprise supports the Proposed Rule, although with some reservations about the delivery process. These concerns include the supervisory challenges associated with implementing a new delivery system, particularly when a more efficient alternative delivery process is available. More specifically, member firms already have an account transfer delivery process in place that could be leveraged to deliver the Educational Communication in a cost effective manner. By tying the delivery of the Educational Communication to an existing process, the Rule would be significantly strengthened and improved.

I. The Delivery Requirement Should be Revised

1. Inducement is a Vague and Undefined Term

Ameriprise supports a simple, plain English delivery requirement that is easy to understand and supervise. The delivery requirement of the Proposed Rule, however, is not only vague and imprecise, but tracks two different delivery scenarios depending upon whether the first contact is verbal or is in writing. Under the current proposal, the delivery of the Educational Communication is triggered when the member or the member's representative attempts to "induce" the former customer to transfer assets to the new firm. The Proposed Rule does not define "induce" or "inducement," making it nearly impossible to determine when an inducement has occurred and the delivery obligation is triggered. More specifically, many transferring advisors send announcement cards or make announcement calls to former customers, advising the customer of their change of employment. These calls and cards are not intended as an inducement, but member firms run the risk of regulatory discipline if FINRA determines this longstanding industry contact practice violated the Proposed Rule.

In addition, Ameriprise is concerned that the Proposed Rule may be interpreted as requiring member firms or their representatives to send an Educational Communication with an announcement card. To the extent the transferring advisor is not protected by the broker protocol, the transmittal of the Educational Communication with the announcement card may be interpreted by the former firm as a violation of the advisor's employment agreement, prompting unwanted and unnecessary litigation. The more practical approach would be to require the delivery of the Educational Communication in conjunction with the delivery of the account transfer paper work, avoiding a situation where a simple announcement, by virtue of the accompanying Educational Communication, could be construed as a solicitation.

2. The Three Day Delivery Requirement is Unreasonable

Ameriprise believes it will be extremely difficult to ensure compliance with the delivery of the Educational Communication within three business days because of the challenges inherent in thoroughly supervising the verbal communications of a new advisor who may be making hundreds of phone calls to former customers. The Proposed Rule requires that the Educational Communication must be sent within three business days of a verbal inducement, or with the account transfer documentation, whichever is earlier. From a supervisory standpoint, it will be next to impossible to ensure compliance with the delivery of the Educational Communication within a three day window. The newly hired advisor may be calling hundreds of customers over the span of several months, requiring extensive supervisory control. More specifically, monitoring the advisor's self-reporting of these calls would cause tremendous operational strain, particularly for new employees who are unfamiliar with firm processes and procedures. Further, if these disclosure obligations extend to multiple new advisors, the supervisory burden could extend to over 1,000 phone calls a week.

3. The Delivery of the Educational Communication Should be Tied to an Existing Process

Ameriprise supports tying the delivery of the Educational Communication to an existing process because it would be more cost effective, efficient, and easier to supervise. The costs of tying the delivery of the Educational Communication to an existing process would be *de minimis* compared to the costs of establishing a new delivery system. Furthermore, the delivery of the Educational Communication would be far more likely if tied to an existing process, as opposed to implementing a new system with the inevitable growing pains and operational challenges. Finally, it would be far easier to supervise an existing process rather than developing a new supervisory system, particularly a system that would be tasked with tracking hundreds of telephone calls and delivering hundreds of documents within a three day timeframe.

Ameriprise believes the delivery of the Educational Communication should be triggered by the delivery of account transfer documentation to former customers of the transferring representative. Fortunately, member firms have an existing process in place to deliver account transfer documentation, so the Educational Communication could be added to the transfer paperwork with limited disruption and cost. Clients would be afforded an opportunity to be informed and to seek information from their representative concerning a number of important account considerations, prior to executing the account transfer paperwork. FINRA already requires a number of disclosure obligations at account opening, including, but not limited to, business continuity plans pursuant to FINRA Rule 4370(e), margin disclosure statements pursuant to FINRA Rule 2264, SIPC information pursuant to FINRA Rule 2266, and the existence of a carrying agreement pursuant to FINRA Rule 4311, so tying the delivery of the Educational Communication to the delivery of account opening paperwork would be consistent with FINRA's existing rules.

More importantly, the simplification of the delivery process would enhance the customer experience. First, providing the customer with the Educational Communication and the account transfer documentation at the same time would allow the customer to consider the documents in the proper context. Second, by simplifying the process, the successful delivery of the Educational Communication would be significantly improved. Third, by simplifying the process, the customer and advisor could consider the Educational Communication after it has been received and reviewed by the customer and avoid all together the confusing initial conversation that follows a verbal inducement – a discussion about a forthcoming Educational Communication that the customer has never even seen much less read.

Finally, the Proposed Rule already contemplates delivering the Educational Communication with account transfer documentation if the first contact is a written inducement, so extending the delivery of the Educational Communication to coincide with the delivery of transfer documentation in all cases is a minor adjustment to the existing proposal. By making this minor adjustment, the Educational Communication could be delivered with the other disclosures and the account transfer paperwork at the same time, providing firms with more assured institutional controls over delivery, and a more cost effective and efficient delivery process, all while achieving the regulatory objective of fully informing the customer.

II. The Educational Communication Should not use the Term "Broker"

Ameriprise believes the tone of the Educational Communication could be improved if the term "broker" was replaced with registered representative, registered person, financial advisor, or advisor. For many financial services firms, broker is an obsolete term that does not accurately reflect the comprehensive advice given by registered representatives in the financial services industry. Indeed, the Recruitment Disclosure Form for the prior proposal, which would have been sent to customers of the transferring advisor, more accurately referred to the advisor as a "representative" and not as a "broker."

III. A FINRA Created Educational Communication is Fair and Uniform

Ameriprise supports the use of the FINRA created Educational Communication and does not support allowing firms to create their own document. First, Ameriprise believes that it is important for investors to receive a document from FINRA, a not-for-profit organization whose mission is to protect American investors by making sure the securities industry operates fairly and honestly, giving investors a sense of comfort that their interests are being safeguarded by an independent third party. The benefit of a FINRA endorsed document is not available if a firm creates its own document. Second, Ameriprise also supports the use of a FINRA created document to ensure uniformity and consistency in the delivery of information to customers. It would be unfair to customers if certain information was not included because the firm exercised discretion in the creation of its own document. After all, the purpose of the Educational Communication is to spark a conversation between the advisor and customer, and the advisor can address any issue raised by the Educational Communication to the extent that it applies or does not apply to the customer's particular circumstances.

IV. Conclusion

Ameriprise appreciates the opportunity to comment on the Proposed Rule, and representatives of the firm would be pleased to discuss the comments presented in this letter or to provide FINRA with additional information.

Please do not hesitate to email me at timothy.games@ampf.com or to call me at (612) 671-4133.

Respectfully Submitted,

Timothy E. Games
Vice President and Group Counsel

Comment on Proposed Rule To Require Delivery of Educational Communication;
RN 15-19; Recruitment Practices

Submitted by Buckman, Buckman & Reid, Inc.

We have reviewed the Revised Proposal dealing with Recruitment Practices concerning the "Educational Communication" (following up on a similar proposal last March with much more specific information being required therein). Clearly, the "conflict of interest" which was the basis for regulatory concern was the trend toward huge, six-, seven-, and even eight-figure signing bonuses offered to individual representatives and groups of representatives to join firms recruiting them. Virtually all of such brokers and/or advisors and broker/advisor groups were at larger firms, and were being recruited by other large firms. The huge incentive packages involved in these types of incentive payment offers was seen by FINRA as posing a serious conflict of interest between the clients and the investment professionals being paid such huge sums. Proprietary products in existing accounts, again virtually the exclusive domain of large firms, was seen as a possible source of conflict of interest between investors owning assets in firm accounts and their financial professionals seeking a huge payday from another firm at the expense of their investors (who may have to sell out of their current firm's proprietary products – with attendant large commissions and possible fees and/or losses with respect thereto -- in order to move to the new, large firm).

Buckman, Buckman & Reid, Inc. hereby suggest an exception for smaller firms, who do not (and, in fact, could not) offer such absurdly huge incentive payments to much more average brokers. Indeed, the payments sometimes (but generally not) offered to an entirely different type of broker or advisor really are only intended to offset temporary bumps in revenue associated with the period of movement from one firm to the new firm, and are rarely, if ever, even close to the gargantuan payments offered by the larger firms to brokers or advisors with truly massive books of business. A payment of less than $50,000 to offset lost revenue in the midst of such a move clearly does not pose any "conflict of interest" to their customers. Similarly, there is almost never a "proprietary product" issue at smaller firms; such products are sponsored exclusively by the large firms and their associated entities.

Buckman, Buckman& Reid, Inc. hereby suggests that an exception be made for firms with the below-listed characteristics, to the proposed "Educational Communication" requirement:

Such requirement would not be imposed on:

1) Firms with 150 or fewer representatives;
2) Firms with no "proprietary products" in customer accounts; or
3) Firms offering $50,000 or less to representatives as an inducement to change firms.

It seems to management and staff of Buckman, Buckman & Reid, Inc. that if the firms, the representatives, and the offer structure involved in a negotiation meet all of the above-listed criteria, then there is no conflict of interest posed by the move whatsoever. Clearly, FINRA intends for "discussions" to occur between investors and representatives on the theory that some investors will be taken aback by the huge incentive payments involved in large firm recruitment efforts, and may elect not to move with their highly-compensated financial professional being paid in that way. Such considerations are not present in any meaningful way with small firm recruitment efforts, which in no way pose anything close to a conflict of interest with any investors, as set forth in the above-listed aspects of small firm recruitment – entirely different from those of large firms. Small firms should not be penalized for the excesses of large firms, especially when there is virtually no existing risk of a conflict with the interests of investors, as set forth above.

Andrew Heath
Chief Compliance Officer
Buckman, Buckman & Reid, Inc.

BRENT A. BURNS
ATTORNEY

BY EMAIL (PUBCOM@FINRA.org)

July 13, 2015

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

RE: Comment on Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (Reg. Notice 15-19)

Dear Ms. Asquith:

Two years ago, in response to Regulatory Notice 13-02, I sent you a comment letter in which I stated that "I would be in favor of a rule requiring the publication of an educational bulletin flagging potential issues that a client should consider when considering moving accounts to a new firm."[1] Therefore, I enthusiastically support the present rule proposal and applaud FINRA's thoughtful consideration of this particularly tricky issue. The new rule proposal successfully focuses on truly advancing investor protection by arming investors with relevant questions and flagging potential issues they should be aware of when deciding whether to follow their broker to a new firm.

By way of background, I have represented clients on both sides of transitions. On behalf of broker-dealers I have sued brokers for violating the Protocol for Broker Recruiting, obtained temporary restraining orders, and litigated and settled hundreds of promissory note cases. I have also represented Registered Representatives by negotiating their recruitment compensation packages, advising them regarding best practices to transition their clients, defending them in injunction proceedings, and helping them resolve promissory notes owed to their former employers. I have also represented retail and institutional investors in arbitrations and in court in connection with sales practice violations.

[1] Brent A. Burns Ltr. to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, Re: Comment on Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices (Reg. Notice 13-02), March 5, 2013.

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BRENT A. BURNS
ATTORNEY

I. Prior Rule Proposal and Comment

I previously criticized the prior rule proposal regarding mandatory disclosure of recruitment compensation to brokers moving firms (Reg Notice 13-02) because it focused customers' attention on the wrong issues:

> By forcing disclosure of recruitment compensation, clients will be given a false sense that they have been given complete information when, in fact, they have only been shown a sliver of the truth. This partial disclosure of a piece of a very large complex compensation package is misleading to clients and will distract them from asking more relevant questions. Clients should not be focusing on how a broker's pay or bonuses are derived from the broker's entire book of business, but instead the clients' focus should be on issues that more directly relate to their client's accounts. FINRA should empower investors by giving them a guideline of questions they may want to ask when considering following their broker to a new firm.

I instead proposed questions akin to those previously suggested by the NYSE:

> In 2006, NYSE Regulation published a bulletin as part of their "Informed Investor" series entitled, "If Your Broker Changes Firms, What Do You Do?"[2] The bulletin provides a list of questions that clients should ask their brokers, among other questions of interest to the clients, when evaluating whether or not they want to move their accounts to their broker's new firm:
>
> - Why is the broker changing firms?
> - How will the change affect your account?
> - Will certain products or services that you like be available at the next firm?
> - Can your existing investments be transferred to the new firm?
> - How are fees different at the new firm?
> - Will you have to pay any fees to the old or new firm to make the change?
> - Are there any tax consequences if you are asked to sell any of your existing products?
> - Are there elements of the broker's transition package that relate to the commissions, fees or costs associated with your account?
>
> I believe FINRA should create a comparable updated disclosure that should be attached to all ACAT forms. With this information, clients can make their own determination as to what information they consider important in evaluating whether they should follow their broker to a new firm. To the extent a client wants additional information, a client can ask their broker for it.

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[2] Attached hereto.

BRENT A. BURNS
ATTORNEY

II. Responses to Specific Requests for Comment

The current Notice ask for comment on the anticipated "usefulness of such a disclosure to a representative's former retail customers." In my opinion, 85-95% of customers follow their brokers to their new firm. I expect that will continue. However, the proposed guidance will allow customers to ask intelligent and relevant questions and provide more meaningful insight into whether or not following their brokers is in their best interests.

I believe a customer should have to confirm receipt of the educational communication by simply signing the form and returning it with the account transfer documentation. I would expect that there may be some criticism regarding this approach that the disclosure may be lost in the pile of papers clients are asked to sign. While there is truth to that criticism, the proposed rule is still the best alternative. Delaying the ability of a customer to transfer their accounts until such time as they sign off and new firm receives the disclosure may effectively freeze the account and unnecessarily expose a client's account to market risk. Moreover, the delay of a two step process will provide an unfair advantage to the customer's current firm in its attempts to retain that client.

The disclosures of educational materials should not be limited to six months. The relevant information contained in the educational material is relevant to any customer contemplating switching firms regardless of when the broker changes firms. Indeed, without the educational materials, customers would have no way of uncovering potential conflicts of interest that may be relevant to them.

III. Potential Criticism and a Solution

At the time brokers will be soliciting the client from their prior firm, they will not have any client information other than what they can remember. If the firms they left and joined are both members of the Protocol for Broker Recruiting, the brokers will only have contact information. This will make it more difficult for brokers to accurately answer customer specific questions relating to their individual customer's accounts. The brokers will not have access to what is in the customers' accounts at the old firm, pricing or other aspects of the old accounts.

However, this should not change the dynamic. Customers should still be allowed to ask the questions and brokers should be required to answer those questions to the best of their ability with the limited information they have and can recall. Some may argue that this will incentivize brokers to take private customer information so that they may better solicit their former customers. I disagree. Privacy rules are already in place that protect this information, and the consequences for violating those rules are severe. The existing rules

BRENT A. BURNS
ATTORNEY

and firm's being able to seek private actions to prevent such misappropriations will, for the most part, deter such wrongful conduct. Additionally, if a customer requests more specific information, nothing prevents the customer from providing the broker with detailed account information without violating the privacy rules. FINRA should provide guidance that it will not be considered improper conduct for a broker to inform a customer that specific information may not be available unless the customer provides account information.

In addition, I would also include an option for customers to request a follow-up written statement from their broker and new firm regarding the specific oral representations made by the broker during the solicitation process that particularly relate to the customer's individual accounts. For example, the letter could address any customer questions relating to whether or not specific products they own will transfer, what they can expect to pay in fees for their accounts, the availability of products they have inquired about, potential tax consequences of the transfer, any enhanced compensation that could pose a potential conflict of interest, and how long that conflict will be in place—i.e. how many years of back-end bonuses for which the broker is potentially eligible. Allowing the customer to obtain such a written statement will memorialize the oral representations the broker made to the client and clarify the existing relationship. If the request is made after the client transitions, it will allow the broker to review the relevant customer accounts and information enabling him or her to more accurately respond to the request.

IV. Final Comments.

In order to reduce risk and misstatements, I believe the proposed new rule will cause firms to create a compliance vetted script for new brokers to follow when soliciting clients from their old firm. The script will have answers to questions commonly asked by clients. To the extent the customer wants personalized representations relating to their own accounts, under my suggested proposal, those answers can be provided by the broker to the best of his or her ability and then confirmed in writing at a later date.

The proposed educational materials will make it easier for customers to begin a meaningful dialogue with their brokers and the broker's current firm. The transparency this creates will strengthen relationships and trust and will benefit the client, the broker and the firm involved. Everybody wins.

Very truly yours,

Brent A. Burns

NYSE Informed Investor

If Your Broker Changes Firms, What Do You Do?

It is not uncommon for brokers in the financial-services industry to change firms. When that happens, investors are presented with the dilemma of whether to move to the new firm with the broker who is changing jobs. Although a good relationship with a broker who understands your objectives and your investment experience is extremely valuable, you should protect your interests and be sure you are making a well-informed choice when your broker asks you to follow him or her to a new firm. You should especially be aware of any potential conflicts of interest, including those that may be related to the broker's compensation arrangements at the new firm.

As a general matter, you should ask, among other questions of interest to you, the following questions, which are discussed in more detail below:

- Why is the broker changing firms?
- How will the change affect your account?
- Will certain products or services that you like be available at the next firm?
- Can your existing investments be transferred to the new firm?
- How are fees different at the new firm?
- Will you have to pay any fees to the old or new firm to make the change?
- Are there any tax consequences if you are asked to sell any of your existing products?
- Are there elements of the broker's transition package that relate to the commissions, fees or costs associated with your account?

Fees and Charges

Will you have to pay any fees to make the change? For example, fee-in-lieu-of-commission accounts may have termination fees if you leave before an anniversary of the account opening.

You should also ask if there are other factors that will directly bear upon your account. While commissions are negotiable, you should have a good understanding of the new commission schedule before moving. Fees for the maintenance of accounts differ from firm to firm and can add up if you have several different accounts, such as one or more IRAs, joint, individual, or custodial accounts. In addition, if your investment strategy employs margin, you should ask what the margin rates are at the new firm.

Conflicts of Interest

If you are asked to move your account to a new firm, you should know whether your broker is being offered any inducement that might affect his or her recommendations as to the type or amount of products and services being offered to you. A broker changing firms may be receiving a substantial payment as an inducement to change firms. There is nothing wrong with a bonus of that type.

NYSE Informed Investor Series

However, it could lead to situations in which the broker seeks to do more business in your account to justify the upfront payment, particularly if the bonus is based upon a percentage of newly generated commissions. Bear your broker's response in mind when deciding on future securities activities.

Portability

Certain mutual funds and annuities may not be transferable or portable to a new firm. If you liquidate the product, it could lead to increased fees or tax consequences. Therefore, it may be in your best interest to have those types of securities remain at the existing firm if you decide to move with your broker. Inquire about the fees you may incur by your existing brokerage firm for maintaining this account.

In addition, investment vehicles such as negotiable certificates of deposit, market-linked certificates of deposit, some non-traded limited partnerships, certain mutual funds and other products may also not be transferable.

It is important to understand that you are not obligated to sell such securities when your broker moves to a new firm. You can open up a new account at the firm to which your broker is moving and choose which securities you wish to move. It is not an "all or nothing" scenario. You should question your broker if he or she has suggested that you liquidate non-portable securities when the broker moves to a new firm or anytime immediately prior to such a move. Make sure that the liquidation is in your best interests.

Yields and Rates of Return

You should ask what investment vehicles, if any, are available for cash in your accounts. Also ask whether the new firm will automatically sweep your cash into money market funds or bank accounts, and if to bank accounts, is the bank affiliated or unaffiliated. If investments are made available for your cash, you should ask what the interest rates are. If you keep significant assets in cash, differing rates may significantly impact your returns. You also may wish to ascertain the availability of tax exempt money market funds if you are in a high tax bracket.

Products and Services

What new products will be available, or conversely, what products that you have purchased in the past or might consider purchasing will be unavailable at the new firm? Naturally, different brokerage firms may offer different products. If there is a family of mutual funds that you have found useful in the past, you may wish to see if those funds are available at the new firm. If you invest in municipal bonds, you may wish to know whether the new firm is an underwriter or an active market maker in them. Where research on investment opportunities is important to you, you may wish to know the coverage and reputation of the new firm in this area. Whether the new firm conducts an investment banking business can be important if you seek access to initial public offerings. That fact is also important in weighing potential conflicts of interest.

As an educated customer, you can make an informed decision and better determine the mix of advantages when you know the questions to ask and ask them. After all, it's your money.

CAMBRIDGE
INVESTMENT RESEARCH, INC.

Eldwin "Charlie" Nichols, Esq.
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VIA ELECTRONIC MAIL

July13, 2015

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

Re: FINRA Regulatory Notice 15-19: Request for Comment on a Rule Proposal to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith,

Thank you for the opportunity to comment upon the proposal of the Financial Industry Regulatory Authority ("FINRA") to adopt FINRA Rule 2272, requiring the delivery of an educational communication to former retail customers of a transferring representative, as discussed in Regulatory Notice 15-19 (the "Proposed Rule").

Cambridge Investment Research, Inc. ("Cambridge") is an independent, privately owned broker-dealer located in Fairfield, Iowa. Cambridge has over 2,700 independent registered representatives throughout the country. Cambridge acts as an introducing broker-dealer and maintains relationships with two national clearing firms. Cambridge's independent registered representatives also conduct extensive non-brokerage business directly with numerous product sponsor companies.

The proposed educational communication attached to Regulatory Notice 15-19 as Attachment B ("Proposed Educational Communication") is titled "Issues to consider when your broker changes firms" and suggests specific questions for a customer to raise with their representative, or with an unnamed "someone" at the customer's current firm. Cambridge supports regulatory efforts that seek to protect investors and provide meaningful disclosure. Likewise, Cambridge encourages an open dialogue between representatives and their customers.

Cambridge's concerns with the Proposed Rule and the language of the Proposed Educational Communication, as currently drafted, are outlined below.

I. THE PROPOSED EDUCATIONAL COMMUNICATION AS CURRENTLY DRAFTED MAY CAUSE UNNECESSARY INVESTOR CONFUSION OR ALARM.

Cambridge already encourages representatives to maintain an open dialogue with their customers. In addition, investor protection measures covering the majority of the issues discussed in the Proposed Educational Communication are already in place, and already occur when a representative moves to a new firm. Costs must already be disclosed to the customer and considered as part of a suitability determination. Firms are already required to have procedures in place, including supervisory procedures, specifically designed to review and evaluate investment recommendations of newly associated representatives to their existing customers relating to replacements or liquidations of certain products.

Cambridge believes the Proposed Educational Communication, as currently drafted, runs the risk of creating unnecessary customer confusion or alarm as it seems to suggest that it is the responsibility of the customer alone to police the costs and suitability related to a new investment, while calling into question the motivation of the representative in changing firms.

As currently drafted, the Proposed Educational Communication recommends that a customer should talk to their broker or "someone" at the customer's current firm about questions concerning the departed representative and why the representative decided to change firms, or about which investments are eligible for transfer to the new firm and the pricing structure at the new firm. Most, if not all, of these questions are better directed to the representative and/or the representative's new firm. As currently drafted, the Proposed Educational Communication raises the possibility of customer confusion, and worse, it raises the possibility that the customer might receive inaccurate information.

Additionally, the Proposed Educational Communication does not express any alternative, nor does it attempt to provide a balanced approach to the information provided to customers in regard to the conflict of interest scenarios described in the Proposed Educational Communication. The Proposed Educational Communication prompts the customer to ask if his or her representative has a conflict of interest based on the fact that the representative might have received some financial incentive to transfer to the new firm or will receive financial incentives to sell the new firm's in-house products. In each of these scenarios, the Proposed Educational Communication fails to discuss the possibility that financial incentives may also create a conflict of interest for the new representative assigned to the account by the current firm, if the customer chooses stays at the current firm; or that the customer's representative might actually be transferring away to a firm that does not have in-house products. Finally, the Proposed Educational Communication discusses the possibility that the new firm may offer a more limited array of investment products as compared to the current firm, without discussing the alternative possibility that the new firm may actually offer greater investment choice. Thus, due to the lack of balance in the Proposed Educational Communication, it will cause unnecessary and unfounded alarm to the representative's customers, potentially causing a false sense of distrust between the representative and his customers, and potentially causing the customers to believe that it is not in their best interests to follow their representative to a new firm.

II. <u>INDEPENDENT REGISTERED REPRESENTATIVES ARE COMPETITIVELY DISADVANTAGED BY THE PROPOSED EDUCATION COMMUNICATION</u>.

Independent registered representatives typically work as independent contractors who operate their own small businesses and directly own their books of business. As small business owners, independent registered representatives directly manage their client relationships with assistance from their broker-dealer. Many independent broker-dealers, like Cambridge, honor the valued relationship between departing representatives and their customers and do not attempt to solicit customers to remain at the firm. Cambridge believes this provides both representatives and customers with free choice to do what is in their respective best interests. By requiring the departing registered representative or their new firm to provide an educational communication to customers, it will place the departing representative at a competitive disadvantage by interjecting a false sense of distrust between the customers and the departing representative. Such a disclosure will likely create a very real possibility that customers may believe it is not in their best interest to follow their registered representative to a new firm even though they may not understand that by failing to do so they will be: (i) subject to similar charges and fees at their current firm; (ii) required to manage their accounts at their existing firm without a registered representative unless they locate a completely new registered representative; or (iii) required to accept a new registered representative assigned to their account with whom they have no relationship and, therefore, have no idea regarding what quality or services will be provided.

A representative's decision to leave his or her current firm does not occur in a vacuum and does not occur without considerable deliberation. Prior to moving to a new firm, the recruitment, due diligence, and planned transition of the representative typically involves months, and sometimes years, of communication between the new firm and the representative.

Part of the recruitment process is determining the nature of the representative's business and whether the representative's business model fits within the business model of the new firm. The new firm also examines the extent to which the representative prefers to offer investment products for which the new firm would need to obtain a dealer or servicing agreement. If the new firm is unable or unwilling to service a product for a transferring representative's customers, investor protection measures require the new firm or the representative to advise the customer of this fact, as well as other options the customer may have, prior to recommending liquidation. The representative and the firm risk violating Rule 2111 if a representative makes a recommendation to liquidate, replace, or surrender a product without conducting a suitability analysis to determine that the recommendation is suitable based upon the customer's current financial needs and investment objections.

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Finally, if an independent representative cannot service his or her customers at a new firm, the representative will likely not make a decision to change firms because doing so could put them out of business as a small business owner.

Typically, when a representative resigns from a firm, that firm sends a letter to the representative's customers stating that the representative has resigned, and that the customer should contact the firm concerning his or her account. The receipt of the letter from the representative's former firm often prompts a telephone call from the customer to the representative or to the representative's former firm, which provides the former firm with an opportunity to discuss the representative's departure and an opportunity to solicit the customer to keep his or her assets at the former firm. It's fair to say that the discussion between the former firm and the customer will likely include a discussion concerning costs the customer may incur to liquidate non-transferable assets or differences in products, services or pricing structures, and fees between the former firm and the new firm. The customer is likely also informed of issues related to transferring accounts, and is sometimes offered incentives to stay at their current firm.

Alternatively, if the representative's customer calls the new firm or calls the representative, the suitability requirements and other investor protection measures require the representative to inform the customer of any issues related to conflicts of interest, costs that will be incurred by the customer, including costs to transfer or liquidate assets and the pricing structure at the representative's new firm. Therefore, the Proposed Educational Communication adds an additional cost to the new firm in its consideration of whether to recruit certain representatives. It also undermines a representative's relationship with his or her customers, and gives the representative's former firm an additional opportunity to solicit the representative's customers, which ultimately puts the departing representative at a competitive disadvantage.

III. CONTRACTUAL RESTRICTIONS MAY HINDER COMPLIANCE WITH THE PROPOSED RULE.

Opposite of the independent registered representative business model is the employee-employer business model between registered representatives and broker-dealers. In the employee-employer model, the broker-dealer firm typically dictates all facets of the registered representative's business and claims ownership of the client relationships and book of business. Firms utilizing the employee-employer model generally prohibit departing registered representatives from soliciting customers to leave the current firm and, in some cases, have filed lawsuits against departing representatives to enforce non-compete, non-solicit, intellectual property or other restrictive covenants, in an effort to keep customers at the firm.

In this model, customers may not be informed about opportunities at alternative broker-dealer firms that may be in their best interests because their representatives are prohibited from discussing alternative broker-dealer firms which may provide better services or investment alternatives. In addition, restrictive covenants may also discourage a departing representative from providing the disclosure after contact with a customer which arguably did not involve an attempt to induce the customer to transfer to the new firm, because the Proposed Educational Disclosure itself could be perceived as evidence that the representative attempted to solicit customers in violation of non-compete, non-solicit, intellectual property or other restrictive covenants. Similarly, even if it is the customer who contacts the departing representative about transferring assets to the new firm, both the departing representative and the new firm risk being accused by the prior firm of violating restrictive covenants by providing the Proposed Educational Disclosure to the customer. Moreover, in addition to these contractual considerations, the new firm also risks scrutiny from FINRA for failing to follow the Proposed Rule if it does not provide the Proposed Educational Disclosure, even if the representative discussed the customer's request but did not "induce" the former customer to transfer assets to the new firm.

IV. TIMING ISSUES AND ADDITIONAL COSTS ASSOCIATED WITH THE PROPOSED RULE.

Cambridge further believes that the requirement to provide the disclosure no later than three business days after the first contact is too cumbersome and will not be easily tracked. Rather, Cambridge proposes that FINRA consider replacing the three business-day rule with a requirement that the disclosure be provided within a reasonable time period, which shall mean on or before the date an account is first opened at the new firm.

As proposed, Rule 2272 would require member firms to provide the Proposed Educational Disclosure to individuals who are former customers of a newly associated representative, but who are not yet (and may never be) customers of the new firm. In order to be in a position to demonstrate compliance with the proposed rule, firms will be required to keep records regarding these individuals, even if they have not opened an account with the new firm. Such record-keeping may require either new systems or the expansion of current customer relationship management systems, and firms will incur the accompanying costs.

V. With regard to FINRA's specific requests for comment, Cambridge submits the following:

1. Cambridge does not believe that there should be a requirement to affirm receipt of the Proposed Educational Communication. Such a requirement would impose unnecessary additional costs and burdens on the registered representative, the new firm, and the customer. Once provided by the new firm, a presumption that the Proposed Educational Communication has been received by the former customer should apply.

2. Cambridge believes that the time period for the requirement of such disclosure (and the accompanying affirmation of receipt, if adopted) should not be extended beyond the proposed six month period. In fact, Cambridge believes the six month period is too long given that most customers will likely communicate with the departing representative within the first few weeks after the departing representative has transferred to a new firm.

3. The scope of the Proposed Rule should not be expanded beyond former retail customers of the transferring broker as the stated purpose of the Proposed Rule is to address FINRA's concerns "that retail customers may not be aware of important factors to consider in making an informed decision whether to transfer assets to their transferring registered representative's new firm."

Thank you for your consideration of Cambridge's comments on the proposed rule.

Respectfully submitted,

Eldwin "Charlie" Nichols
Asst. V.P., Corporate Legal & Risk Management

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July 13, 2015

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street N.W.
Washington, D.C. 20006-1506

RE: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of an Electronic Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

Charles Schwab & Co., Inc., ("Schwab")[1] appreciates the opportunity to comment on FINRA's proposed rule (the "Proposal") to require delivery of an educational communication to customers of a transferring representative. Schwab strongly supports FINRA's overarching goal of making more information available to customers about the potential conflicts and costs that could arise when their registered representative transfers to another firm and attempts to induce former clients to transfer their assets to the new firm.

Previous iterations of this proposal[2] would have provided customers with specific information about the financial incentives a representative received or could receive as part of the representative's transition to a new firm, and the costs associated with transferring customer assets to the representative's new firm. The newest version of the Proposal fails to provide meaningful information on either of these subjects. Instead, it places the onus on the customer to pose questions to the transferring representative in the hope that the key information will be disclosed. Customers should not have to bear the burden of asking difficult questions to receive material information – certain disclosures should be required. We respectfully request that FINRA withdraw the Proposal and return to its previously-stated goal of requiring "targeted and meaningful information"[3] to customers about the conflicts that could exist when a registered representative transfers firms.

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[1] Charles Schwab & Co., Inc., is the broker-dealer subsidiary of The Charles Schwab Corporation (NYSE: SCHW), a leading provider of financial services, with more than 325 offices and 9.6 million active brokerage accounts, 1.5 million corporate retirement plan participants, 1.0 million banking accounts, and $2.57 trillion in client assets as of May 31, 2015. Through its operating subsidiaries, the company provides a full range of wealth management, securities brokerage, banking, money management and financial advisory services to individual investors and independent investment advisors.

[2] FINRA has previously published two alternative versions of a proposed rule to disclose conflicts of interest to customers of transferring brokers: Regulatory Notice 13-02, *Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices* (available at http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf) and SR-FINRA-2014-010, *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Relating to Recruitment Practices* (available at https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf).

[3] 79 Fed. Reg. 17592, 17593 (March 28, 2014).

Previous Iterations of the Rule Benefitted Customers

Schwab strongly supports the idea that a customer serviced by a registered representative who has transferred to another firm should be made aware of the conflicts that might exist when the representative contacts the customer regarding moving his or her account to the representative's new place of employment. In its original rule proposal, FINRA noted that it "believes that customers would benefit from knowing the incentives that may have led their representative to change firms before they transfer an account to a new firm."[4] To that end, the proposal required disclosure of enhanced compensation paid to the registered person as part of his or her transfer to another firm when the registered person contacts a former client about the transfer of employment, or when the client contacts the registered person about the transfer of an account to the new firm. The proposal defined enhanced compensation as including "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 member."[5] There was also a sensible *de minimis* exception for enhanced compensation.

Schwab believes disclosure is the hallmark of securities regulation. The original proposal would have provided customers with clear, plain-English information about the financial incentives that may have contributed to the representative changing firms, and allowed the customer to weigh that information when deciding whether to transfer assets to the new firm. For clients unfamiliar with industry recruiting practices, this information may have brought to light a conflict not previously considered: that the registered representative has a financial incentive – beyond a normal salary or commission – to encourage the transfer of assets to his or her new firm, regardless of cost to the client or whether such a move makes sense for the client's particular situation.

To address privacy concerns concerning a representative's compensation and other comments, FINRA revised and re-proposed the rule in 2014. Importantly, the goal of the revised proposal did not change:

> FINRA believes that former customers would benefit from knowing, among other things, the ***magnitude of the financial incentives*** that may have led their representative to change firms, how the former customer's assets, or trading activity, factored into the calculation of such incentives, and whether moving their assets to the recruiting firm will ***impact their holdings or impose new costs***. The proposed rule change is intended to focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.[6]

The revised rule proposal dropped the concept of providing former customers with specific, detailed information on the transferring representative's enhanced compensation and instead

[4] *Regulatory Notice 13-02* p. 4.
[5] *Id.* at p. 5.
[6] 79 Fed. Reg. 17592, 17593 (March 28, 2014) (emphasis added).

proposed that a general idea of the range of enhanced compensation be disclosed. The disclosure was broken down into "aggregate upfront payments" and "aggregate potential future payments," and required reporting of both numbers within broad ranges. Moreover, the rule added an additional disclosure about the costs to the former customer of transferring assets to the new firm, including account termination or account transfer fees from the previous firm; account opening or maintenance fees at the recruiting member firm; information about whether any of the client's assets are not transferable to the new firm; and details about any costs associated with the liquidation and transfer of assets to the new firm.

Again, Schwab applauded the proposal for providing clear, detailed information to a client about the potential incentives for a representative to encourage a transfer of assets, as well as the information about the costs of doing so. As many firms did at the time, we acknowledged some of the operational concerns about the proposal, particularly around the disclosure of information about the costs of transferring assets from one firm to another. But, as FINRA concluded, we believe those concerns were solvable and that customers would clearly have benefitted from this revised rule proposal. Unfortunately, in June 2014, the revised rule proposal was withdrawn.

The New Rule Proposal Fails to Inform Investors of Potential Conflicts of Interest and Costs Associated with the Transfer of Assets

The Proposal represents a significant and disappointing step backwards. Inexplicably, the Proposal abandoned the original goal of providing important information to clients and eliminated the most important provisions of the previous proposals. The title of the proposal illustrates the change in focus. Where the previous proposals required "*disclosure*," the new proposal requires "delivery of an *educational communication*." The distinction is important. An "educational communication" is not disclosure. Clients should be told the objective information that exists, not taught how to elicit that information from a registered representative through a question and answer process that by its very nature is entirely subjective.

The Proposal also falls short of its objective because it does not require <u>any</u> information to be provided to the customer. Instead, the customer would receive a communication outlining "issues to consider when your broker changes firms."[7] The document "would highlight the potential implications of transferring assets to the recruiting firm and suggest questions the customer may want to ask to make an informed decision"[8] about transferring his or her assets. The burden is entirely on the customer to ask questions of the registered representative, including questions about the representative's compensation. Although FINRA asserts that the proposal "is more likely to prompt a discussion with the transferring representative or current firm,"[9] Schwab believes the opposite is true. The awkwardness of asking a professional to describe his or her financial compensation in detail is obvious. Few customers will be willing to ask these questions. Worse, nothing in the rule requires the representative to provide meaningful answers to any question in the "educational communication." As a result, it is uncertain whether any

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[7] *Regulatory Notice 15-19: Proposed Rule to Require Delivery of an Electronic Communication to Customers of a Transferring Representative*, p. 10.
[8] *Id.* at p. 3.
[9] *Id.* at p. 5.

material information about possible conflicts of interest and costs associated with a transfer of assets will be disclosed to the customer.

In the Proposal, FINRA states that it believes the revised Proposal "would achieve the regulatory objective of informing decisions by retail customers whether to transfer assets to the recruiting firm, while reducing the direct costs on firms to provide the educational communication and the operational challenges of the initial proposal."[10] Apparently cost to the firms has now become an equal priority to informing retail customers about potential conflicts of interest. While Schwab believes that all regulation should rely on sound cost-benefit analysis, we believe that adequate disclosure to investors should always be paramount. This is especially true where, as here, the cost at issue is minimal. As this proposal fails to provide customers with meaningful disclosure, Schwab respectfully requests that FINRA withdraw the Proposal.

If the Proposed Rule Is Not Withdrawn, It Should Be Modified

Schwab believes that FINRA should return to the key principles of the previous proposals, especially the idea of clear and concise disclosure of critical information to customers of a transferring representative. That disclosure should include information about upfront payments, including any signing bonus, and potential future payments beyond what is ordinarily provided to similarly situated representatives. It is also important that the disclosure provide information to the client about the real costs resulting from the transfer of assets to the representative's new firm – including increased fees and tax consequences. In addition, the transferring representative should be required to provide disclosure to the customer regarding the standard fees and trading costs at the new firm, whether any discounts are being offered, and for what period of time any discounts would apply.

Furthermore, Schwab believes that any required disclosure to a customer regarding the transfer of a representative to another firm should not have an expiration date. The impact of an attempt to induce a client to change firms does not diminish over time. It is unfair to deprive certain customers of information that is disclosed to others simply based on the passage of time or the date a representative chooses to contact a customer. There is no rational customer-focused reason that could justify such a rule. At a minimum, we recommend FINRA extend the requirement from six months to one year following the date that the registered representative begins employment or associates with the new firm.

Schwab also believes it is important for the rule to clarify that it does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting customers. The rule should also state that it does not require or permit registered persons to take customer contact information from their former firm – particularly in violation of Reg. S-P or contractual obligations. These principles were adopted by FINRA in the prior proposal.[11]

In addition, we recommend returning to what was proposed in 2014 – a *de minimis* exception of $100,000. The 2014 rule proposal would have required disclosure of whether the registered representative "received or will receive $100,000 or more of either (1) aggregate 'upfront

[10] *Id.* at p. 5.

[11] 79 Fed. Reg., 17592, 17602 (March 28, 2014).

payments' or (2) aggregate 'potential future payments' in connection with transferring"[12] assets to the new firm. Schwab believes that enhanced compensation in amounts less than that is not likely sufficient to present a material conflict, and it also would exclude firms that do not pay any type of recruitment compensation.

Finally, we recommend that FINRA require disclosure *prior* to the time a customer decides to transfer their account to the new firm. This ensures that a customer will have sufficient time to consider and evaluate the disclosed information. To accomplish this objective, disclosure should be made at the first communication with the customers, whether in oral discussion, or a mailing to the customer. Some commenters have suggested that FINRA should require disclosure at the time account transfer forms are provided to a customer in order to minimize operational costs. Such a requirement would deprive a customer of the opportunity to evaluate the disclosed information because a customer has likely already committed to transfer to the new firm by the time account transfer forms are sent. The new - but late - disclosure would likely go unnoticed, or easily dismissed by a broker as "just something I need to send." Moreover, operational costs cannot be used to justify a failure to timely provide disclosures, or trump a client's right to timely disclosure.

Conclusion

Schwab feels strongly that FINRA should return to the original intent of increasing disclosure around incentives for transferring representatives that could result in conflicts of interest for investors. By placing the burden on customers to ask uncomfortable questions of the transferring representative, FINRA's new Proposal all but guarantees that no meaningful information about conflicts of interest will be disclosed. As a result, the Proposal fails to meet FINRA's fundamental goal of protecting investors. We urge withdrawal or significant modification of the Proposal.

Schwab would welcome the opportunity to discuss our views more thoroughly. If you have any questions or require additional information, please contact me at (202) 638-3750 or jeff.brown@schwab.com. Thank you very much for the opportunity to comment on this important proposal.

Sincerely,

Jeffrey T. Brown
Senior Vice President and Head,
Legislative and Regulatory Affairs

[12] *Id.* at 17954.

I have read your revised proposal and , once again, I am left dumbfounded at the amount of time, energy and resources obviously deployed on behalf of this proposal. While the generic premise behind FINRA and its proposals captures ideals that provide some balance to the industry, this proposal feels like another FINRA "rabbit hole" fueled by scale players like Morgan Stanley and Merrill Lynch to help keep their own business models intact. As a veteran of the industry in many capacities, I have observed , supervised and been a personal target of some of the most ridiculous outdated media policies and generic rules all promulgated by FINRA's attempts to remain relevant. In most cases, enforcement of these rules is both disjointed and subjectively enforced by the larger firms , depending on their relationship with the employee affected. Rarely , with new proposals I see enacted , can I connect the dot between client advocacy and the rules. This proposal smacks of just that.

Some thoughts:

(1) If this is truly a client disclosure piece, please consider mentioning that while financial incentives are offered, often the advisor leaves behind deferred compensation or even unamortized EFL's in order to make the change, **often times on behalf of the client exclusively! I have witnessed many FA transitions in the past few years wherein the losing firm retaliates so strongly that financial incentive is nothing more than an attempt to recover lost compensation.**

(2) Disclosure should contain language that mentions "hollow" incentives offered by the losing firm as well. Clients are often enticed with " come on" incentives to retain the relationships once an advisor has departed. Often those incentives are short term fee adjustments, commission discounts , etc..

(3) Disclosure should also mention that while their relationship is centric to the departing advisor, their new relationship may be with an advisor that does not have their history, suitability or complete financial profit and loss information. The departing advisor often embodies rule 405.

(4) There should be language that adequately explains that client advocacy may have been the rationale for the firm move. Assuming that these moves are purely for financial gain to the advisor is unfair and again, smacks of lobbying by the scale players like MS and ML.

It should be noted that I greatly respect your organization for most of its work. That said, as a multi year advisor and supervisor with two major firms and their predecessors, I personally believe FA free agency is both healthy and necessary for true client advocacy. Creating a potentially intimidating disclosure upon an advisor transition is a slippery slope , and ironically, could prevent many advisors from transitioning on behalf of clients! Finally, while I often witnessed questions about fees and commissions over my many decades in the industry , I never once had a client ask about an advisor's paycheck compensation or any incentives received by the transitioning advisor. That in itself is why I think this is just another " rabbit hole" initiative by FINRA that should be scrapped altogether.

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The proposed retail customer notification requirements underlying RN 15-19 may make sense for customers of traditional brokerage firms where recruiting bonuses are commonplace, conflicts of interest abound and firms consider their customers as belonging to the firm. In firms such as these, customers are immediately reassigned to another broker upon a broker's departure for another firm. The firm has great incentive to retain its customers and your proposed communication will give pause to a departing broker's customers to rethink their personal decision as to whether or not to transfer to the new firm. In instances such as these, it may make sense for firms to provide FINRA's proposed communication to affected customers inasmuch as these customers have considerable optionality.

In many independent contractor firms, however, that is simply not the case.

In firms such as ours, firms that employ a financial planning model, customers are not treated as belonging to the firm nor are we subject to the same conflicts of interest associated with large firms that pay recruiting bonuses, manufacture proprietary products, supply leads, provide branding power or advertising support. While our customers are technically customers of the firm from a regulatory standpoint, their relationship is, first and foremost, with the representative/advisor and that relationship is both respected and encouraged. Customers are initially obtained solely through the individual efforts of representatives/advisors. The ensuing relationship is developed and cultivated exclusively by the representative/advisor. Customers are then introduced to the firm by the representative/advisor as business warrants. Quite obviously, there is no "ownership" of customers by the firm in a business model of this nature.

When a representative leaves our firm, not only do we not stand in the way of customer accounts transferring to the departed representative's new firm, we openly encourage and support account transfers as soon as possible. As such, our firm does not provide the customer with the optionality that is typically associated with a more traditional brokerage firm nor is the firm in a position to.

Required delivery of your proposed customer communication could be viewed as interfering with that important advisor/customer relationship and attempting to sabotage it.

Moreover, our registered representative agreement specifically addresses the subject of the firm's willingness to cooperate with the registered representative and his/her new broker-dealer in the orderly transfer of a resigning representative's customer accounts to his/her new firm.

While I suppose I can see some rationale for the proposal set forth in RN 15-19, it is a one-size-fits-all solution that simply is inapplicable to many, many firms.

At a minimum, I think this proposal should be modified to contain carve-out provisions for firms that don't fall within the real purview of and underlying rationale for this proposed rule.

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July 13, 2015

VIA ELECTRONIC MAIL

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

Re: FINRA Regulatory Notice 15-19
Recruitment Practices: FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to Regulatory Notice 15-19, *Recruitment Practices: FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative* (the "Notice," or "RN 15-19") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on May 27, 2015.[2] The Notice requests comments on a proposed rule change by FINRA to adopt FINRA Rule 2272 (the "Proposed Rule"), which would require a member firm that hires or associates with a registered representative to provide an educational communication to his or her former customers who transfer assets to the registered representative's new firm.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rule. By way of background, the Committee submitted a comment letter to FINRA in response to Regulatory

[1] The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] RN 15-19 is available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf
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Notice 13-02 which initially proposed the recruitment practices rules in 2013,[3] and also submitted a comment letter in response to FINRA's filing of an amendment of such rules with the SEC in 2014 under File No. SR-FINRA-2014-010.[4] The Committee believes that, since the initial rule proposal announced under Regulatory Notice 13-02, the Proposed Rule has made significant progress in reducing certain of the operational burdens while at the same time providing simpler, easier to understand disclosure for investors. For example, the Committee strongly supports the removal of the obligations under the earlier rule proposals that required reporting information related to recruited registered representatives to FINRA. In addition, the Committee also strongly supports the elimination of the detailed and individualized compensation disclosures that were required under previous iterations of the rule.

While the Committee supports a number of the changes under the Proposed Rule, the Committee believes a number of burdensome operational issues remain and there are other areas where additional clarity could be provided. The Committee is also concerned that the timing requirements related to the delivery of the educational communication are needlessly complex and will be difficult to monitor and supervise. In addition, the Committee believes that in certain circumstances the educational communication may confuse investors, and in such cases the rule should allow member firms to refrain from delivering the document altogether.

PROVIDING THE EDUCATIONAL COMMUNICATION IN CONNECTION WITH ORAL CONTACT WITH FORMER CUSTOMERS

Under Proposed Rule 2272(b)(1)(B), if the first individualized contact with a former customer during which the registered representative or member firm attempts to induce such customer to transfer assets to the new firm is oral, rather than in writing, the firm or registered person "must 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 Committee has several concerns related to the process associated with the oral disclosures and follow-up by firms with the written educational communication. More specifically, our concerns relate to the difficulties of documenting compliance regarding the delivery of the oral disclosures; the limited time provided to a member firm to send the required educational communication; and the lack of clarity as to whether the timing requirement applies to member transmission or rather customer receipt of the written disclosure. We discuss each of these below.

Documenting Compliance Regarding the Delivery of the Oral Disclosure. The initial oral contact between the registered representative and the former customer could take place in a number of ways, including formal meetings, telephone calls initiated by the registered representative or the former customer, or chance meetings in the local community or elsewhere. As a practical matter, neither the member firm nor the registered representative has control over the circumstances related to the initial contact. As a result, there are a number of different

[3] A copy of the Committee's comment letter is available here: http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p220108.pdf.
[4] A copy of the Committee's comment letter from 2014 is available here: http://www.sec.gov/comments/sr-finra-2014-010/finra2014010-29.pdf.

factors that impact the manner in which a firm will be able to monitor and surveil its registered representatives with respect to the initial oral inducement. The Committee urges FINRA to recognize the varied manner in which these initial oral contacts may take place and to acknowledge that a member firm will need to rely almost solely on training and/or certifications related to the delivery of the oral disclosures to former customers and defer to member firm procedures that are reasonably designed to ensure that recruited registered representatives understand their obligations with respect to providing the appropriate information at the time of first oral contact related to transferring assets to the new firm.

Timing of Sending the Communication After the Initial Oral Contact. In addition, given the different scenarios under which the initial oral contact may occur, and the different ways in which firms will build out the delivery of the written educational communication to the former customer, the Committee believes that three business days is not a sufficient amount of time to send the educational communication after such initial oral contact. The Committee recommends that the Proposed Rule be revised to extend the amount of time for sending the educational communication after the initial oral contact from three business days to at least ten business days. The Committee notes that the timing requirement for the delivery of such disclosure under the 2014 rule filing FINRA made with the SEC in March, 2014 (SR-FINRA-2014-10) included a ten business day timeframe.[5]

Timing Requirement Should Focus on Member Transmission Not Receipt by Customer. The Committee notes that the Proposed Rule language is somewhat unclear with respect to when the written disclosure is required in the context of an initial oral contact. Under Proposed Rule 2272(b)(1)(B), the initial reference indicates that the educational communication "will be provided no later than three business days" after the contact while the second reference indicates that it "must be sent within three business days from such contact." The Committee is concerned that the "will be provided" language could be read as indicating that the former customer will have possession of the educational communication within three business days. Therefore, if FINRA determines to maintain the general structure of the Proposed Rule with respect to the timing of the delivery of the educational communication, the Committee recommends that the language be revised to clearly indicate that the obligation under the Proposed Rule focuses on when the member firm sends the educational communication, not when the former customer receives it.

THE TIMING REQUIREMENTS FOR DELIVERY OF THE EDUCATIONAL COMMUNICATION SHOULD BE SIMPLIFIED

As an alternative to extending the delivery obligation to ten business days after the initial oral contact, the Committee recommends that the Proposed Rule adopt a different timing standard with respect to the delivery of the educational communication, regardless of whether the customers are initially contacted orally, in writing, or not at all. The Committee believes that a clearer standard would be to simply require that the educational communication be provided to the former customer prior to transferring the assets to the new firm. More specifically, the

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[5] *See* Proposed FINRA Rule 2243(b)(1).

Committee would be in favor of using the delivery of the customer's account transfer documentation as a more simplified triggering event rather than the point of first oral or written inducement.

Supervisory Procedures Related to the Delivery of the Educational Communication

RN 15-19 indicates that FINRA expects firms to implement supervisory procedures "reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures." The Committee recommends that either the Proposed Rule, or a Supplementary Material, make clear that appropriate procedures to implement the delivery of the educational communication would be deemed to exist if a firm were to include only training, spot checks and certification. The Committee is very concerned that, over time and through the course of the examination process, the only procedures deemed satisfactory will become producing copies of a signed and dated copy of the educational communication. The Committee is concerned that firms will feel compelled to create a process of individual customer acknowledgment of receipt of the educational communication to document compliance with the Proposed Rule unless there is an explicit indication that such documentation is not required.

Stand-Alone Educational Communication

The Proposed Rule calls for the educational communication to be a stand-alone document. The Committee believes that firms may want to integrate the educational communication into the account transfer process, and therefore recommends that the Proposed Rule or a Supplementary Material indicate that the educational document may be integrated into a firm's individualized account transfer process provided that (1) the timing requirements of the Proposed Rule are satisfied, and (2) the substantive content of the educational communication drafted by FINRA is substantially similar to the content included in the firm's documentation for the account transfer process.

Applicability of the Proposed Rule's Requirements Where Transfers Occur "Absent Contact"

Under RN 15-19, there is a brief description of the treatment of a former customer who transfers to the recruiting firm "absent contact (e.g., where a customer decides to transfer assets after learning from a general announcement or other sources that his or her representative has changed firms)." The Committee believes that the Proposed Rule or a Supplementary Material should include an explicit reference to the concept that a former customer may be viewed as determining to transfer to the recruiting firm without individualized contact, and should include examples of those situations such as where the customer learns through a general announcement, word-of-mouth, or some other means.

EXEMPTION FROM DELIVERY OBLIGATION UNDER CERTAIN CIRCUMSTANCES

The premise behind the educational communication is to "highlight the potential implications of transferring assets to the recruiting firm and suggest questions a customer may want to ask to make an informed decision." In certain situations, it is possible that the registered representative's move to the new firm will not trigger any of the concerns that are discussed in the educational communication. For example, a customer may be solely a customer of the firm as a result of a variable annuity purchase made through the transferring registered representative, and such representative may not be receiving any recruiting-based compensation from the new firm, and there may be no impact on the fees imposed on the customer's account from the proposed transfer. The Committee believes that in this case, the educational document could create confusion, and do more harm than good with respect to explaining the implications of the registered representative's transfer to the recruiting firm. The Committee recommends that the Proposed Rule include an exemption to delivery of the educational communication where none of the issues identified in such communication are applicable to the registered representative's association with the new firm.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposed Rule. Please do not hesitate to contact Eric Arnold (202.383.0741) or Cliff Kirsch (212.389.5052) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: BTM
Eric Arnold

BY: BTM
Cliff Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial Corporation
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company
Voya Financial, Inc.

COMMONWEALTH *financial network*

VIA ELECTRONIC MAIL

July 13, 2015

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

RE: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

FINRA Regulatory Notice 15-19 requests comment on a proposed rule that would "require delivery of a FINRA-created educational communication focused on key considerations for a customer who is contemplating transferring assets to the recruiting firm" (the "Proposed Rule").

The Proposed Rule to require delivery of a uniform, FINRA-created disclosure document represents a substantial improvement over the initial proposal filed with the SEC in March 2014 (the "Initial Proposal"), particularly with respect to the many operational and practical aspects of the Initial Proposal that were the subject of Commonwealth's previous comment letter.

Nevertheless, FINRA's continued insistence that delivery of the educational communication must occur "at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm", as proposed, is not practical or possible for any member firm to reasonably enforce. If FINRA truly "remains concerned that retail customers may not be aware of important factors to consider in making an informed decision whether to transfer assets to their transferring registered representative's new firm", and believes that a rule requiring delivery of a FINRA-created educational communication is the solution to its concern, then it is vital that FINRA modify the delivery requirements of the Proposed Rule in a manner that will permit firms to implement processes reasonably designed to ensure delivery of the communication, as opposed to the current proposal that will merely set firms up for failure, as discussed more fully below.

Commonwealth Financial Network® ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 registered representatives ("RRs") who are independent contractors conducting business in all 50 states. Commonwealth appreciates the opportunity to comment on the Proposed Rule.

29 Sawyer Road
Waltham, MA 02453-3483
800.237.0081
781.736.0793 fax

110 West A Street, Suite 1800
San Diego, CA 92101-3706
877.347.1982
619.471.9701 fax

commonwealth.com

Content of Communication

Commonwealth agrees that customers should understand the potential implications of a decision to transfer assets to a new firm, particularly when a RR will receive material, incentive-based compensation from their new firm that creates a material conflict of interest, such as signing bonuses and other cash payments that are intended to provide a financial incentive to encourage RRs to switch firms. Provided that the educational communication is uniform and general in nature as described in the Proposed Rule, and is designed to help foster inquiries by such customers to the transferring RR when and as determined important or relevant by the respective customer, Commonwealth agrees with this approach.

Delivery of Communication

As currently drafted, the triggers and methods of delivery of the educational communication under the Proposed Rule cannot be reasonably implemented or enforced by member firms.

"Time of First Contact" Concept Unworkable

The requirement that the educational document must be provided "at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm" is unworkable for several reasons. For example, the "time of first contact with a customer regarding the transfer of assets to the recruiting firm" could actually occur *before* the RR leaves their current firm. It is not unusual for an RR to contact customers to inform them of the RR's intention to change firms and to discuss the potential for the customer to transfer assets to the RR's new firm. In such event it would stand to reason that the RR's current firm would be responsible for enforcing the requirements of the Proposed Rule since the RR is not yet under the supervisory jurisdiction of the recruiting firm. It is not reasonable to expect the RR's current firm to have any knowledge of that "first contact" or the means to enforce the Proposed Rule's delivery requirements as RRs often do not provide their firm with advance notice of their departure.

Additionally, firms will not know when an RR has actually had "the first contact" with a customer as required by the Proposed Rule. If the first contact is in writing, whether in paper format or electronically, such individual client communications would likely constitute "correspondence" under FINRA Rule 2210 and as such would not require prior approval by a supervising principal. Therefore, depending upon the firm's correspondence review procedures, which are subject to the supervision and review requirements of FINRA Rules 3110(b) and 3110.06 through 3110.09, and which do not require review by a supervising principal of each written piece of correspondence, it is not reasonable to expect firms to know when such communications occurred for purposes of enforcing the Proposed Rule's "time of first contact" delivery requirements.

Further, if the first contact is oral, the Proposed Rule requires that the educational communication "be sent to the customer within three business days or with any other communication sent by the recruiting firm to the former customer in connection with a potential transfer of assets, whichever is earlier." This concept too is unworkable. Firms will not know the time of first oral contact between an RR and a customer for any purpose, let alone for the specific purpose of discussing the transfer of the customer's assets to the recruiting firm. Moreover, the Proposed Rule would not only require firms to somehow know when the time of first oral contact between the RR and a customer occurred, but would require the delivery of the educational communication "within three business days or with any other communication sent by the recruiting firm to the former customer in connection with a potential transfer of assets, whichever is earlier." Without knowing the date of first contact with a customer regarding the transfer of assets to the recruiting firm, whether in writing or oral, firms could not reasonably comply with the "within three business days or with any other communication sent by the recruiting firm to the former customer in connection with a potential transfer of assets, whichever is earlier" component of the Proposed Rule's delivery requirement.

FINRA states that it "expects that firms can implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures." We disagree. Firms could provide various means of training, obtain regular certifications from RRs and conduct spot checks of written communications, and there would still be no reasonable assurance that the educational communication was actually delivered when and as required under the Proposed Rule. Firms will not be able to conduct a "spot check" for delivery of the communication within any specific timeframe if the first contact its oral, since firms will have no way of knowing when the first oral contact occurs. If the first contact is in writing (whether hard copy or electronic), "spot checks" would be insufficient to reasonably ensure compliance with the Proposed Rule. Like many firms, Commonwealth employs Lexicon and random sampling techniques to review correspondence. To expect firms to determine whether the specific communication under review was "the first contact with a customer regarding the transfer of assets to the recruiting firm" would be impractical, enormously time consuming, inefficient and unnecessarily costly.

FINRA must recognize that employing a delivery obligation that is tied to "the first contact with a customer regarding the transfer of assets to the recruiting firm" is not reasonably enforceable by firms *regardless* of the amount of training and oversight firms might employ in an effort to comply with the Proposed Rule; will not achieve FINRA's goal to ensure that firms deliver the educational communication to customers in accordance with the Proposed Rule's delivery requirements; and will serve only to set firms up for failure to reasonably comply with the Proposed Rule.

As an alternative to the proposed delivery requirements, FINRA should simplify the Delivery of Communication requirement to correspond with the time of delivery of the account transfer documentation, whether that be at the time the RR seeks to obtain the client's signature on an account transfer (ACAT) form, or in the event of an authorized block transfer via negative consent, the educational communication should be included along with the negative consent letter that is mailed to the customer in advance of initiating the block transfer. The ACAT and block transfer events that would cause an account to be transferred to the recruiting firm are within the reasonable knowledge and control of member firms, and therefore compliance with the delivery requirements of the educational communication during either of those events are subject to reasonable implementation and supervision by member firms.

"Absent Contact" Concept Unworkable

Much like the concept of a delivery obligation that is triggered following "the first contact with a customer regarding the transfer of assets to the recruiting firm", the concept that a firm would know when the transfer of an account was the result of *no* contact with the customer, where the customer learns that an RR has changed firms from some other source and decides on their own to transfer the account to the RR's new firm, is equally unworkable. The "absent contact" concept would require firms to delineate between "first contact" and "no contact" with a customer for purposes of determining the timing and means of their delivery obligation.

As an alternative, rather than provide for delivery of the educational communication along with the account transfer documentation *only* in instances where there is no contact with the customer, FINRA should modify the Proposed Rule to provide for delivery of the educational communication along with the account transfer documentation *in all cases* in which a RR transfers to a new firm during the requisite period. While FINRA has proposed a period of six months following the date that the RR associates with the recruiting firm as the time period during which the educational communication must be provided to customers, FINRA should modify the proposal to require delivery of the communication for a period of 90 days following the date the RR associates with the recruiting firm, which period is more representative of the amount of time it takes RRs to change firms and transfer customer accounts.

The modification above would also make unnecessary the additional complexity of the Proposed Rule that would require firms to somehow know or learn that a customer "expressly states that he or she is not interested in transferring assets to the recruiting firm", only to subsequently change their mind later in a manner that would trigger the delivery obligation. FINRA should adopt a much simplified requirement that firms must deliver or cause the delivery of the educational communication to a customer who transfers their account to the RR's new firm within 90 days following the date that the RR associates with the recruiting firm, *without* the multiple and myriad complexities of the "if this, then that" delivery requirements of the Proposed Rule.

Reporting to FINRA

We applaud FINRA's decision to remove the reporting obligations in the Initial Proposal that would have been a burdensome requirement for firms without providing any meaningful benefit to investors.

Conclusion

We do not agree with FINRA's assertion that "the proposal is an effective and efficient alternative to the initial proposal... while reducing the direct costs on firms to provide the educational communication and the operational challenges of the initial proposal." While the concept of a FINRA-created educational communication represents a substantial improvement over the Initial Proposal, the timing and nature of the Delivery of Communication requirements in the Proposed Rule will prove to be anything but "effective and efficient."

There is no benefit to employing a complex series of "if this, then that" triggers for delivery that are dependent upon firms to know exactly when "the time of first contact" or "no contact" with a customer regarding the transfer of assets to the recruiting firm has occurred. Determining the timing and means of delivery of the communication in accordance with the various triggers described in the Proposed Rule as discussed above will not be effective and will in fact be grossly inefficient for member firms to make reasonable efforts to comply.

FINRA should therefore modify the Proposed Rule in a straightforward manner to require member firms to deliver or cause the delivery of the educational communication along with the requisite account transfer documentation to a customer who transfers their account to the RR's new firm within 90 days following the date that the RR associates with the recruiting firm.

We appreciate the opportunity to comment on the Proposed Rule and we urge FINRA to modify the Proposed Rule as discussed above.

Respectfully,
COMMONWEALTH FINANCIAL NETWORK

Paul J. Tolley

Paul J. Tolley
Senior Vice President
Chief Compliance Officer

FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

July 13, 2015

Marcia E. Asquith
Secretary
Financial Industry Regulatory Authority
1701 K St N.W.
Washington, D.C. 20005

Re: Regulatory Notice 15-19 – Recruitment Practices

Dear Ms. Asquith:

On May 27, 2015, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on proposed rules to require the delivery of a FINRA-created educational communication to clients of advisors who have transferred to a new broker-dealer and whose clients are considering moving their accounts to the advisor's new firm.[1] The proposed educational communication contains questions investors may want to ask their financial advisor including: costs the client may incur, non-transferability of assets, conflicts of interest, changes in level of service, and product availability.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. FSI commends FINRA for listening and responding to input and making considerable changes from its previous proposals.[3] Nevertheless, FSI believes operational and supervisory challenges remain in the proposal. FSI recommends that FINRA clarify the delivery standard, implement minor changes to alleviate supervisory challenges and consider financial advisors whose current firm is acquired by another. Our concerns and suggestions are outlined in our comments below.

<u>Background on FSI Members</u>

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

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[1] FINRA Regulatory Notice 15-19, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

[3] See, FINRA Regulatory Notice 13-02, available at, http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf. See also, Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243, available at, https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf

producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment and applauds FINRA for its proposal. FSI supports FINRA's goal of increasing transparency for investors. However, FSI believes there are several operational and supervisory challenges with this proposal. These concerns and suggestions are discussed in greater detail below.

I. FSI Commends FINRA for Listening to the Industry's Concerns, but Operational and Supervisory Challenges Remain

A. Introduction and FSI's Previous Comments

FSI appreciates and commends FINRA for listening to the industry's input and incorporating it into its current rule proposal. FINRA originally sought comment on its recruitment compensation rule in January 2013.[4] In its original request for comment, FINRA would have required that broker-dealers notify their clients of the exact compensation package in excess of $50,000.[5] In our comments, FSI stated that we support full transparency for investors. However, FSI raised several concerns, including financial privacy and the arbitrariness of the $50,000 threshold, as reasons why FINRA should improve the rule as proposed.[6]

In March 2014, FINRA filed with the SEC a proposed rule change to adopt FINRA Rule 2243. In this amended rule filing, FINRA proposed that broker-dealers disclose recruitment compensation in excess of $100,000, and only in specific, predetermined ranges.[7] In its comments, FSI applauded FINRA for raising the threshold limit, but also raised concerns about potential violations of non-solicitation agreements and requested FINRA conduct a thorough cost-benefit analysis of the rule.[8]

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[4] FINRA Regulatory Notice 13-02, available at, http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf
[5] See, *Id.*
[6] FSI's Comment Letter on Regulatory Notice 13-02, available at, http://www.finra.org/sites/default/files/NoticeComment/p220105.pdf
[7] Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243, available at, https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf
[8] FSI's Comments on SR-FINRA-2014-010, available at, http://www.sec.gov/comments/sr-finra-2014-010/finra2014010-33.pdf

B. Current Proposal

FINRA's current proposal would require that a broker-dealer provide a client FINRA-created educational materials shortly after their financial advisor first attempts to induce a client to transfer their assets.[9] FINRA's intent is that the educational material will prompt a client to ask their financial advisor questions involving the transfer of their account, such as the costs involved and any changes in the level of service.[10]

FSI applauds FINRA for listening to the comments of FSI And others about the operational and competitive challenges inherent in its previous proposals. FSI believes the current proposal is more effective in providing guidance enabling clients to ask the appropriate questions to their advisors when determining whether to transfer their assets. The content of the educational communication is clear and achieves of the goal of prompting the conversation. FSI applauds and supports FINRA's goal of transparency for investors when they decide whether or not to transfer their account to a new firm. FSI therefore offers our support for the proposal.

Nevertheless, FSI believes there are still operational and supervisory challenges enmeshed in the current proposal. We discuss our concerns below and provide suggestions on ways to address them.

C. The Proposal Would Benefit from Clarification of the Delivery Requirement to Overcome Operational and Supervisory Challenges

In its proposal, FINRA would require that the educational communication be provided "shortly after the time of first contact with a client regarding the transfer of assets to the recruiting firm."[11] Further, FINRA's proposal has different delivery standards depending on whether the communication was oral, in writing, or electronic. If the communication is in writing or electronic, the educational communication must be attached to it, either physically or through hyperlink. If the communication is oral, the recruiting broker-dealer must provide the educational material within three business days.[12] Further, this delivery requirement would apply for six months following the financial advisor's effective date with the new firm.[13]

FSI believes that FINRA's current proposal leaves considerable room for confusion and interpretation and we believe FINRA should clarify the standard. The standard is vague and will lead to confusion as to what constitutes a first contact to induce a client to move their account. For example, a financial advisor may share a social relationship with a client, and mention to the client within a social context that they are transferring to a new firm. This type of situation may lead to confusion as to whether the communication would trigger the requirement to deliver the educational communication. Further, if a broker-dealer were to distribute a general announcement that an advisor is transferring to their firm, there may be confusion as to whether this triggers the requirement to deliver of the educational communication.

[9] FINRA Regulatory Notice 15-19, available at,
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf
[10] See, Id.
[11] See, Id.
[12] See, Id.
[13] See, Id.

From an operational perspective, delivering any type of required notice to clients that includes very specific timing constraints, can be more effectively implemented by the back-office of the broker-dealer rather than relying on the financial advisor. Suggesting this responsibility be left to the financial advisor is fraught with potential supervisory concerns. In its notice FINRA states that firms may adopt procedures to ensure compliance with the delivery requirement such as training and spot checks.[14] However, from a supervisory framework standpoint firms may not be confident that these types of measures ensure compliance with the delivery requirement.

FSI suggests alternative standards that FINRA can propose to provide clarity on this standard. FINRA could require that the educational communication be delivered to investors at the time they are given ACAT or transfer account documents. An additional benefit of this requirement would be the ability for clients to discuss the costs and considerations involved with transferring their account to a new broker-dealer. This more definitive standard also removes any subjective determination by a broker-dealer as to what constitutes a first contact to induce a client. Finally, this proposed alternative ensures that each client is provided the educational communication in an identical manner, providing consistent transparency and allowing investors to ask their financial advisor the pertinent questions outlined in the communication. If FINRA believes this is too late in the process, then perhaps the requirement could be altered to require the communication prior to providing a client with an ACAT transfer form. In other words, firms cannot provide clients with transfer paperwork until the proposed piece has been provided and the customer has had sufficient time to review it (i.e. two or three business days).

We would also suggest that if the broker-dealer is able to provide this educational communication as part of their transfer process, it may realistically be provided to all new clients, not just those transferring to the firm within the first six months of the financial advisor joining the firm. This would have the effect of achieving far reaching awareness of the issues clients should consider anytime they transfer their accounts, regardless of whether it's motivated by the client themselves, or if they are choosing to follow a financial advisor who is moving to a new firm.

D. <u>The Proposal Should Address Advisors Whose Firms are Acquired</u>

FINRA's rule is intended to educate clients on the issues and potential costs involved with switching firms along with their financial advisor. FINRA is especially concerned with transparency around transferring advisors who are to receive additional recruitment compensation or bonuses. Nevertheless, FINRA is silent on the issue as to what should occur when a financial advisor changes broker-dealers because his or her firm is acquired, and its associated persons are absorbed by another broker-dealer; or because he or she is employed by or associated with a financial institution that transfers its networking arrangement to a new broker-dealer. We recommend that FINRA consider whether instances such as acquisition would trigger delivery of the educational communication and provide firms additional guidance.

FSI suggests that FINRA consider clarifying whether the educational communication must only be provided when a financial advisor voluntarily transfers to another broker-dealer or any time there is a transfer, regardless of the circumstances.

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[14] FINRA Regulatory Notice 15-19, available at,
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

David T. Bellaire, Esq.
Executive Vice President & General Counsel

FINANCIAL SERVICES ROUNDTABLE

***Via electronic mail at* pubcom@finra.org**

July 13, 2015

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

Re: FINRA Regulatory Notice 15-19, Recruitment Practices

Dear Ms. Asquith:

The Financial Services Roundtable ("FSR")[1] respectfully submits these comments to the Financial Industry Regulatory Authority ("FINRA") concerning its Regulatory Notice 15-19, which requests comment on proposed FINRA Rule 2271 (Educational Communication Related to Recruitment Practices and Account Transfers). FSR is pleased to comment in favor of the proposal contained in Regulatory Notice 15-19, which we believe represents a more considered approach than was previously set forth under proposed FINRA Rule 2243.[2]

FSR and its members support clear and concise disclosures that aid clients in understanding their accounts and the activities of their chosen brokerage firm and representatives. As discussed more fully in our comment letter concerning proposed

[1] As *advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs. Learn more at FSRoundtable.org.

[2] SEC. & EXCH. COMM'N, Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices), 79 Fed. Reg. 17592, 17593 (March 28, 2014).

Rule 2243, however, we believed that aspects of the prior proposal could have been better crafted to enhance investor comprehension and encourage best practices by FINRA member firms and representatives.

FINRA's revised approach avoids the overly-complex approach of the prior proposal.

Under the prior proposal, when a representative or the representative's new firm (the "recruiting firm") would make "first individualized contact" with a client (a "former client") whose account is with the representative's prior firm (the "former firm"), they would have been required to disclose three categories of information: (i) details about upfront and potential future compensation equaling $100,000 or more that the representative may receive; (ii) whether the former client would incur costs, charged either by the recruiting firm or the former firm, for transferring his/her assets to the recruiting firm; and (iii) whether the former client's account contains any assets that could not be transferred to the recruiting firm. The recruiting firm would also be subject to reporting obligations to FINRA regarding the representative's compensation arrangement.

As noted in our comment letter, the prior proposal seemed overly complex, did not recognize some of the practical issues with its proposed approach, and did not provide useful or appropriate information to clients.

In contrast, Regulatory Notice 15-19 proposes the reasonably straightforward approach of a standard form disclosure statement ("Proposed Disclosure") that would be delivered to clients. FSR believes the Proposed Disclosure would provide useful information to clients, so that they can make intelligent inquiry should they so desire.

The Proposed Disclosure would include an educational component for the purposes of "highlight[ing] the potential implications of transferring assets to the recruiting firm and suggest[ing] questions the customer may want to ask to make an informed decision."[3] Furthermore, the way in which firms deliver this communication would be standardized by mandating that it take place "at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm."[4] The new proposal also would permit more flexible delivery methods, including hyperlinks.[5]

FSR is concerned, however, that the Proposed Disclosure would present operational and supervisory challenges because the Proposed Disclosure would be triggered upon the new firm's attempt to *induce* a former client to transfer assets to it.

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3 Regulatory Notice 15-19, May 2015.

4 Regulatory Notice 15-19, May 2015.

5 Regulatory Notice 15-19, May 2015.

The Proposed Disclosure should not be triggered based on any attempt to "induce" the former client to transfer assets to the new firm.

As proposed, the requirement to deliver the Proposed Disclosure would be triggered when the recruiting firm or its representative attempts to "induce" a former client to transfer assets to the new firm. FSR objects to the use of "induce" as a triggering event, because the term is undefined and is an imprecise word (which would be of particular concern when the transferring broker sends a tombstone announcement card).

In this regard, we note that if the *inducing* event were a phone call (or other oral contact), the Proposed Disclosure must be provided within three (3) business days. For the typical firm, it would be almost impossible to track the hundreds of telephone calls made by the transferring broker to former clients, and then ensure that the Proposed Disclosure is mailed within three (3) business days. For that reason, FSR objects to the proposed "three-business-day" requirement. We urge FINRA to require delivery of the Proposed Disclosure as part of an existing process because it would be more cost effective and efficient.

FSR notes that broker-dealers already have an existing process in place to deliver account transfer documentation. For example, distributing the Proposed Disclosure by the delivery of the account transfer documentation (the documents can be delivered in the same package), and the Proposed Disclosure could be sent with the account transfer paperwork at little added cost. By changing the triggering event, FINRA would improve operational efficiencies and ensure the delivery of the Educational Communication in a timely and cost effective manner.

Conclusion

Although we support the Proposed Disclosure as modified to address the operational and supervisory challenges discussed above, FSR still has questions about the overall necessity of any additional regulatory requirements in this area in light of existing principles under, for example, FINRA Rules 2010 and 2210 as well as conflicts of interests ideas that FINRA has articulated in the past.[6] Nevertheless, in light of the restructuring of the prior proposal into proposed Rule 2273, FSR offers its support to a final rule that addresses fully the operational and supervisory challenges we have noted in this letter.

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[6] *E.g.*, Report on Conflicts of Interest (Oct. 2013), *available at* www.finra.org/sites/default/files/Industry/p359971.pdf.

FSR appreciates the opportunity to submit comments on FINRA's request for comment about the proposed rule. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact Richard Foster at Richard.Foster@FSRoundtable.org, or Felicia Smith, Vice President and Senior Counsel for Regulatory Affairs at Felicia.Smith@FSRoundtable.org.

Sincerely Yours,

Rich Foster

Richard Foster
Senior Vice President and Senior Counsel
for Regulatory and Legal Affairs

Financial Services Roundtable

HM

Hanson McClain Securities

July 6, 2015

Via email to: pubcom@finra.org

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

Re: FINRA's **Regulatory Notice 15-19** Request for Comment
On the Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

A healthy, trustworthy financial services industry is necessary for our economy to grow and prosper. By helping clients save and invest, the industry provides the important function of transferring capital for those who need it for the future (investors) to those who need it today (businesses).

Unfortunately, some practices that have become the "norm" in the financial services industry do more harm than good. For instance, when the level of confidence in our industry declines, we all suffer.

I'm speaking specifically of the hidden payments for broker recruitment that are damaging the reputation of our industry and hurting our economy.

Whenever a broker receives an up-front bonus in return for transferring client accounts to a new firm, those clients have the right to know. After all, the new firm is paying a broker *not* for future production or performance, but for his or her ability to lure clients to a new company.

Not disclosing this fact is a breach of trust and patently unethical.

Frankly, if our industry cared about our clients as much as we care about our own businesses, we'd abolish these up-front incentives altogether. These sometimes outrageous bonuses encourage behavior that is rarely in the best interests of the clients.

FINRA could easily abolish this practice and I believe that it should. Yet if FINRA believes it's in the best interest of all parties to continue this practice, than at a minimum, I believe there should be more disclosures made available to the clients, much like was proposed in March 2014.

I want to make it clear that this is not merely about my firm's interests, but about what's best for the public. Not requiring full disclosure *not only* damages our industry's reputation, but it also serves to damage the economy, hurts public trust, and negatively impacts the lives of hard working Americans whose faith in the financial services industry must be restored.

Respectfully submitted:

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July 24, 2015

Via e-mail (pubcom@finra.org)

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

Re: Comments on FINRA's Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (Regulatory Notice 15-19) (the "Proposed Rule")

Dear Ms. Asquith:

HD Vest Investment Services ("HD Vest") appreciates the opportunity to comment on Regulatory Notice 15-19 ("RN 15-19" or the "Proposed Rule"), which would require member firms to deliver a FINRA-created educational communication (the "Educational Communication") to "former customers" of a transferring representative.[1] HD Vest is a registered broker-dealer and FINRA member with approximately 4,500 registered representatives nationwide. The Firm actively recruits new registered representatives into the securities business (*i.e.*, individuals who have not previously been registered), and also recruits representatives from other firms.

I. Introduction

HD Vest opposes the current proposal because all firms should not be forced to provide general disclosures that may not be relevant to their transferring representatives' or customers' circumstances. The Proposed Rule should not apply to firms that do not pay material compensation to induce representatives to transfer firms. Moreover, clients already receive vast information about fees and nearly all account transfers currently occur without any issues. Therefore, the other considerations the Educational Communication addresses do not represent important systemic problems that warrant an entirely new and expensive disclosure regime. The Proposed Rule is far too complex and impractical, and firms will experience significant operational challenges trying to comply with it. On the other hand, it will not significantly enhance consumer protection. HD Vest hopes that FINRA will consider these comments constructively, and withdraw or significantly alter the Proposed Rule.

1 FINRA Regulatory Notice 15-19 (May 2015) ("RN 15-19"), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf.

II. BACKGROUND

FINRA developed the current proposal in response to its previous efforts to design disclosure around recruiting compensation. This section briefly outlines how this rule proposal has evolved over the past three years.

The Prior Proposal

FINRA initially proposed recruiting compensation disclosure requirements in Regulatory Notice 13-02 (Recruitment Compensation Practices) ("RN 13-02") and subsequently filed proposed FINRA Rule 2243 with the Securities and Exchange Commission ("SEC") in March 2014.

The disclosure approach proposed in RN 13-02 was designed to serve as an individualized disclosure requirement that would **not** apply to recruiting firms that paid a transferring representative less than $50,000 in enhanced compensation. RN 13-02 noted that "[t]he *de minimis* exception for enhanced compensation under $50,000 is intended to allow firms to offset a registered person's ordinary costs in the transition process, since such compensation does not raise the same degree of conflicts of interest as more lucrative enhanced compensation arrangements."[2] HD Vest initially supported the balanced approach in this rule proposal; a one-size-fits-all approach was never advisable.[3]

Proposed Rule 2243 increased the *de minimis* exception for recruitment compensation to $100,000, but it also dramatically expanded the scope of the disclosure requirements proposed in RN 13-02.[4] For example, in addition to disclosure to former customers, firms would have had a reporting obligation to FINRA – a requirement unrelated to investor evaluation of conflicts of interest.[5] Commenters were very concerned about the implications of Proposed Rule 2243, including significant operational challenges and the effectiveness of the disclosures.[6] FINRA withdrew Proposed Rule 2243 in June 2014.

The Current Proposal

Proposed Rule 2272 would require recruiting firms to deliver the Educational Communication to transferring representatives' former customers for six months following the

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2 FINRA Regulatory Notice 13-02 (Jan. 2013) at 5 ("RN 13-02"), available at https://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf.

3 *See* HD Vest Investment Services Comment Letter regarding Regulatory Notice 13-02 (Recruitment Compensation Practices) (Mar. 5, 2013), available at http://www.finra.org/sites/default/files/NoticeComment/p220093.pdf.

4 *See* SEC, *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243*, Release No. 34-71786, at 47 (March 24, 2014) ("Proposed Rule 2243"), available at https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf.

5 *See generally id.*

6 *See* SIFMA, Comment Letter on FINRA Proposed Rule Change regarding Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) (Apr. 17, 2014) at 3, available at http://www.sifma.org/issues/item.aspx?id=8589948662.

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date the representative associates with a new firm.[7] The Educational Communication contains a general recruiting compensation disclosure, which is intended to highlight certain potential conflicts of interest that *may* arise *if* recruiting firms compensate representatives when they transfer firms. The other disclosures raise select considerations common to all investors who consider transferring an account between firms. The Educational Communication does not actually provide customers the information they need to make a decision, but rather "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."[8] The five considerations are presented as follows:

1. Could financial incentives create a conflict of interest for your broker?
2. Can you transfer all of your holdings to the new firm? What are the implications and costs if you can't?
3. What costs will you pay—both in the short term and ongoing—if you change firms?
4. How do the products at the new firm compare with your current firm?
5. What level of service will you have?

The timing of the Educational Communication depends on whether the recruiting firm or transferring representative "attempts to induce" the former customer to transfer assets to the recruiting firm orally or in writing.[9] If there is a written attempt to induce, then the Educational Communication must be delivered at the time of the "first individualized contact with a former customer."[10] For example, if the recruiting firm or the transferring representative contacts the former customer in writing (*i.e.*, by sending a letter) then the Educational Communication must accompany the first written communication.[11] If the recruiting firm or the transferring representative emails the former customer then the first email may hyperlink directly to the Educational Communication.

If there is an oral attempt to induce, the former customer must be told during the conversation that they will receive the Educational Communication which includes considerations about deciding whether to transfer their assets to the member firm, and the Educational Communication must be sent by the member firm within three business days. If, however, the transferring representative or member firm send other correspondence to the former customer related to transferring assets before this three business day period expires, the Educational Communication must accompany that correspondence.

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7 *See* Proposed Rule 2272(a).

8 *See* RN-15-19, *supra* note 1, at 3.

9 Proposed Rule 2272(a), *supra* note 7.

10 *See* Proposed Rule 2272(b)(1).

11 *See* Proposed Rule 2272(b)(1)(a).

III. OPERATIONAL CHALLENGES WILL MAKE COMPLIANCE BURDENSOME AND COSTLY, IF NOT IMPOSSIBLE

A. Transferring Representatives and Recruiting Firms May Not Have Access To Former Customers' Information.

In order to send the Educational Communication, recruiting firms would need to obtain information about the transferring representatives' former clients, including a client list and addresses. The Proposed Rule seems to assume that this information is available to recruiting firms as a matter of course before the former customer actually becomes a client of the new firm. However, representatives are not required to – and due to Regulation S-P and contractual limitations may not be permitted to – retain or share former customers' contact information when they switch firms.

1. Regulation S-P May Prevent Firms From Obtaining Information Necessary to Comply With the Proposed Rule.

If FINRA proceeds with the Proposed Rule, it needs to clarify how firms are supposed to comply consistent with Regulation S-P ("Reg. S-P"). Reg. S-P restricts firms' ability to share nonpublic personal information ("NPPI") about customers with unaffiliated third-parties unless customers have been notified and given the opportunity to opt-out of this disclosure. Reg. S-P may prevent a transferring representative from sharing former customers' NPPI with recruiting firms. Without this information, however, it would be impossible to comply with the Proposed Rule.

Reg. S-P defines NPPI to include (i) personally identifiable financial information (PIFI); and (ii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any PIFI that is not publicly available information.[12] The fact that an individual is or has been a firm's customer or has obtained a financial product or service from a firm is PIFI.[13] Under certain circumstances, transferring representatives could violate Reg. S-P if they inform the recruiting firm that an individual is a customer of the representatives' former firm and share the customer's address. Without this information, however, the recruiting firm will not be able to determine who must get the Educational Communication mailing, and will not be able to perform the mailing within the time frames and other requirements of the Proposed Rule.

The Proposed Rule does not provide transferring representatives and recruiting a firms a safe harbor from Reg. S-P to allow representatives to retain customer NPPI and provide it to recruiting firms to facilitate the Proposed Rule's required mailings. Although the Protocol for Broker Recruiting ("Protocol") allows representatives to retain certain NPPI when they leave, the SEC has indicated that the "information may be used at the representative's new firm *only by the*

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[12] 17 C.F.R. § 248.3(t)

[13] 17 C.F.R. § 248.3(t)(3)(u)(2)(C)

representative, and only for the purpose of soliciting the representative's new clients."[14] In any event, not all firms have joined the Protocol so it cannot be relied upon globally to facilitate compliance with the mailing requirements.

This situation is similar to Regulatory Notice ("RN 07-36"), in which FINRA clarified that "in establishing due diligence procedures [to supervise transferring representatives], *NTM 07-06* does not recommend, nor does it suggest, that a firm obtain nonpublic personal information about any customers the prospective registered representative may seek to bring to the new firm."[15] Similarly, in Regulatory Notice 15-22, FINRA specified that, in facilitating bulk account transfers, "no personal confidential customer information (e.g., social security numbers) may be provided to the receiving introducing or clearing firm, as applicable, unless the sharing of such information is in compliance with SEC Regulation S-P . . . ."[16] The Proposed Rule does not adequately address the fact that representatives and firms could be subject to enforcement for sharing the very information the Proposed Rule assumes is available to the new firm.[17] Before moving forward, FINRA needs to clarify the interaction between recruiting firms' need to identify former customers and send them mailings *before* they become customers, and Reg. S-P's general prohibition against recruiting firms obtaining information about a representative's former customers.

2. Transferring Representatives Contractual Obligations May Prevent Them From Sharing Customer Information With Recruiting Firms.

Even if sharing information is permitted under Reg. S-P, transferring representatives may be prohibited by contract from taking customer NPPI when they leave their prior firm. This would again preclude transferring representatives from providing recruiting firms the identify of former customers and contract information necessary to comply with the Proposed Rule. In order to move forward, FINRA would need to make clear that the Proposed Rule supersedes any private contractual restrictions that firms have prohibiting representatives from taking customer

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14 SEC, *Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information*, Exchange Act Rel. No. 57427, 73 Fed. Reg. 13692, 13702 n.91 (Mar. 13, 2008) (emphasis added). In this release, the SEC proposed rules that would universally have allowed (but not required) firms to permit departing representatives to provide their new firm the name and contact information of former customers; however, the proposal was never adopted.

15 FINRA Regulatory Notice 07-36 (FINRA clarifies guidance relating to SEC Regulation S-P under Notice to Members 07-06, Supervision of Recommendations after a Registered Representative Changes Firms) (Aug. 2007) ("RN 07-36"), available at https://www.finra.org/sites/default/files/NoticeDocument/p036445.pdf.

16 FINRA Regulatory Notice 15-22 (Discretionary Accounts and Transactions) (June 2015) ("RN 15-22") at 10, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-22.pdf.

17 *See SEC Initial Decision In the Matter of NEXT Financial Group, Inc.*, File No. 3-12738 (Jun. 18, 2008), available at https://www.sec.gov/litigation/aljdec/2008/id349jtk.pdf; *see also SEC Order Instituting Administrative and Cease and Desist Proceedings In the Matter of NEXT Financial Group, Inc.*, File No. 3-12738 (Aug. 24, 2007) available at https://www.sec.gov/litigation/admin/2007/34-56316-o.pdf; *HFP Capital Markets, LLC, Letter of Acceptance Waiver and Consent No. 20090193202-01* (Mar. 26, 2012), available at http://disciplinaryactions.finra.org/Search/ViewDocument/31596.

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information. This is a significant step with widespread implications that counsels strongly against FINRA proceeding with the Proposed Rule.

Furthermore, if a transferring representative was subject to a non-solicitation agreement and the recruiting firm mailed the Educational Communication to a former customer, the "inducement" standard would let the former firm argue that the transferring representative breached his or her agreement by attempting to induce the customer to transfer firms. This could provoke a lot of litigation. If FINRA decides to proceed with the Proposed Rule, HD Vest supports SIFMA's suggestion that it should clarify that the Proposed Rule only governs disclosure obligations, and delivery of the Educational Communication is not evidence that a former customer has been solicited.[18]

B. It is Not Practical to Supervise Communications With a Representative's Former Clients Before They Even Establish Accounts.

Assuming that recruiting firms can obtain the baseline information necessary to perform the required mailings, to comply with the Proposed Rule firms would still have to establish new compliance programs to somehow track all of the communications transferring representatives may have with former customers. HD Vest does not have any existing infrastructure or systems it can leverage, and wholly new reporting systems would need to be created. Firms would need to establish written supervisory procedures and related supervisory control procedures, and ongoing additional dedicated compliance resources. Firms would also be challenged to facilitate compliance with complicated requirements by brand new representatives who are just joining the firm. The costs of the Proposed Rule would be substantial, and many of those costs are caused by the failure to take into account practical considerations associated with trying to monitor formal and informal communications.

Under the Proposed Rule, firms would be required to deliver the Educational Communication if a transferring representative has attempted to induce a former customer to transfer assets to the new firm – orally or in writing. The only way recruiting firms will know this is if the contact is self-reported. Most firms will have to rely on representatives' voluntary compliance because firms have no way to track telephone calls or whether a representative held an in-person meeting.

If a representative reports an oral contact with a former customer, firms will have to make subjective determinations regarding whether the representative attempted to induce the former customer based on second-hand accounts of the conversation. Without guidance from FINRA regarding what it means to "attempt to induce," firms will have to use their own judgment on a case-by-case basis. Evaluating every contact with a former customer will be extremely burdensome.

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18 *See* SIFMA Comment Letter Regarding FINRA Regulatory Notice 15-19 (July 13, 2015) at 10, available at https://www.finra.org/sites/default/files/notice_comment_file_ref/15-19_sifma_comment.pdf.

SIFMA highlighted several of these challenges in its comment letter to Proposed Rule 2243, when it noted:

> Firms will face significant challenges creating a supervisory system that will be reasonably designed to monitor the fluid and dynamic oral communications between representatives and customers. For example, there are potential challenges associated with pinpointing the exact date when a communication may morph into a solicitation to transfer assets. The challenge is enhanced by the fact that these communications may occur prior to the representative joining the new member firm. Indeed, firms may reach investors that may have already expressed a desire to remain with the current member firm – thereby creating needless confusion rather than providing useful information.[19]

The foregoing demonstrates that trying to supervise varied communications – and then having to determine subjectively whether there was an "attempt to induce" – is impractical if not impossible.

C. If the Rule is Adopted Delivery Deadlines Should be Lengthened.

The proposed time frame to deliver the Educational Communication is insufficient. Assuming no written communications are sent between an oral "attempt to induce," firms would have three business days to send the Educational Communication. As outlined above, before determining whether a mailing is required, firms will have to: (1) gather the necessary customer information (in compliance with Reg. S-P); (2) obtain information from representatives about informal communications they might have had with customers; and (3) evaluate whether a there was an "attempt to induce." This will be a very labor intensive process. Faced with these significant challenges, firms will need ample time make these evaluations. Three days is simply not enough.

If the requirement is adopted, Firms should be afforded at least ten business days to deliver the Educational Communication. Alternatively, as suggested below, FINRA should allow firms the flexibility to deliver the Educational Communication with account opening documents if the client decides to transfer firms.

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The challenges identified above would require firms to incur significant costs to implement a new compliance apparatus that is reasonably designed to comply with the Proposed Rule. Compliance with Proposed Rule will divert compliance resources away from other more significant compliance initiatives with greater customer benefit. The cost to firms is clearly greater than any perceived benefits investors would realize by receiving the Educational Communication.

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[19] SIFMA Comment Letter on FINRA Proposed Rule Change Regarding Rule 2243, *supra* note 6, at 3.

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IV. Firms that Do Not Pay Material Recruitment Compensation Should Not Have to Deliver the Educational Communication

The rationale for requiring disclosure of a potential conflict of interest related to recruitment compensation is very different from disclosing the possibility that an investor might experience portability or other issues or costs when transferring assets. Recruiting compensation disclosures are only potentially helpful for investors if their representative is actually receiving material transition payments. If that is not the case, an investor will be confused as to why they are receiving this disclosure. When generally discussing the topic of disclosure reform, Commissioner Daniel M. Gallagher rightly noted, "from an investor's standpoint, excessive illumination by too much disclosure can have the same effect as obfuscation — it becomes difficult or impossible to discern what *really* matters."[20] Therefore, if firms are not paying transferring representatives significant recruitment compensation, they should not have to deliver the Educational Communication, or at least not in its current form.

V. Additional Disclosure Of General Educational Information on Account Transfers Is Unnecessary and Potentially Confusing

The disclosures in the Educational Communication regarding portability of assets, costs, and availability of products and services are potentially relevant to investors anytime they transfer assets among firms – not just when a former customer follows a representative to a new firm. Some individuals in FINRA's test group cited in RN 15-19 might have found these disclosures helpful when they were asked in isolation. FINRA did not specify whether any members of the test group found some of the disclosures more meaningful than others, or whether they would have found them helpful if the issues were irrelevant to their situation.

FINRA has not cited any evidence of systemic problems with the account transfer process or current disclosure regime that justifies the substantial costs associated with the proposed Educational Communication. On the contrary, the transfer process works well most of the time. Before establishing another burdensome disclosure requirement that may or may not add marginal incremental value, FINRA should establish that a problem actually exists.

Portability

The "portability" disclosure in the Educational Communication notes that some products may not be transferrable if an investor transfers assets to a new firm. While this may be true in some instances,[21] there is no evidence of widespread problems transferring securities (especially among the large number of firms that primarily do business in mutual funds). In fact, the

[20] *See* Daniel M. Gallagher, *Remarks at the 2nd Annual Institute for Corporate Counsel* (Dec. 6, 2013), available at http://www.sec.gov/News/Speech/Detail/Speech/1370540462287.

[21] *See* SEC Investor Publication *Transferring Your Brokerage Account: Tips on Avoiding Delays* ("SEC Investor Publication Regarding Transferring Brokerage Accounts") available at http://www.sec.gov/investor/pubs/acctxfer.htm (e.g., "securities sold exclusively by your old firm; mutual funds or money market funds not available at the new firm; limited partnerships that are private placements; annuities; or bankrupt securities.").

evidence is to the contrary. The SEC has found that "[m]any investors transfer their accounts from one brokerage firm to another **without a hitch**."[22] FINRA has similarly noted that "[w]hile the [transfer] process **generally runs smoothly for the vast majority of thousands of accounts transferred each year**, there are times when delays occur and investors pose questions."[23] Delays might occur for any number of reasons (including reasons not addressed in the Educational Communication), but this is not indicative of a systemic problem with the transfer process. In fact, the most common securities including, but not limited to, equities, corporate and municipal bonds, unit investment trusts, mutual funds, options, annuities, and cash are readily transferable among firms through the Automated Customer Account Transfer Service ("ACATS") system.[24]

Additionally, there is no evidence that current disclosure regarding account transfers is inadequate. On the contrary, there is already a comprehensive disclosure regime in place governing the account transfer process.[25] FINRA Rule 11870 already mandates written disclosures carrying firms and/or receiving firms must promptly provide customers with respect to the transfer and disposition of "nontransferable assets," as well as other matters that may arise during the transfer process.[26]

In addition, RN 07-06 already provides that: "[i]f the new firm is unable or unwilling to service a customer's mutual fund or variable product, the new firm or the registered representative should advise the customer of this fact, as well as the options the customer may have to continue to hold the investment at the customer's prior firm, before recommending that the customer liquidate or surrender the investment."[27] This is occurs as a matter of course in servicing client accounts, and is the appropriate way to deal with the limited exceptions when an asset cannot be transferred.

Costs

The "costs" disclosure in the Educational Communication is also unnecessary and redundant, particularly since investors already get specific information to evaluate their decision to transfer assets. As the SEC states in its investor publication, "[y]our old firm may charge you a fee for the transfer to cover administrative costs. Sometimes, the new firm will also charge a fee. **These fees are typically spelled out in your account agreements with the firms.**"[28]

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22 *Id.* (emphasis added).

23 *See* FINRA, *Understanding the Brokerage Account Transfer Process* ("FINRA Investor Publication Regarding the Brokerage Account Transfer Process") (emphasis added), available at http://www.finra.org/investors/understanding-brokerage-account-transfer-process.

24 *See* DTCC website, available at http://www.dtcc.com/clearing-services/equities-clearing-services/acats.aspx.

25 *See generally* FINRA Rule 11870.

26 FINRA Rule 11870(C)(1)(D).

27 *See* FINRA Regulatory Notice 07-06 (Supervision of Recommendations after a Registered Representative Changes Firms) (Feb. 2007) ("RN 07-06") at 3, available at https://www.finra.org/sites/default/files/NoticeDocument/p018630.pdf.

28 *See SEC Investor Publication Regarding Transferring Brokerage Accounts*, *supra* note 21 (emphasis added).

Investors who are worried about the short-term costs they will experience during the account transfer process, e.g., termination fees or transfer fees, can simply refer to their existing account disclosure documents. Investors who are concerned with the long-term costs to move firms will be able to evaluate these fees around the time they establish a new account at the recruiting firm. Most firms provide their customers with account agreements and schedule(s) of fees at the time they establish an account. Many firms publish their fee schedules online. Accordingly, investors already have helpful information than is provided by this section of the Educational Communication.

Products and Services

Two of the five issues highlighted in the Educational Communication raise topics related to the products and level of services that may (or may not) be available at the transferring representative's new firm. FINRA has not offered any evidence that this is a frequent or significant problem customers face. Common sense dictates that representatives who transfer firms want to be able to offer the same or better products and services to their customers. Therefore, they will tend to transfer to a firm that will enable them to keep their former customers' business. Situations where this is not the case are likely to be the exceptions rather than the rule, and these exceptions should not drive additional costly and potentially confusing disclosure requirements. Absent compelling evidence of a significant issue and lack of adequate information, these disclosures in the Educational Communication are unwarranted.

* * *

In sum, the current disclosure regime governing the transfer of assets process is comprehensive and is adequately designed to provide investors with timely disclosure of material issues that may arise during the account transfer process. The proposed Educational Communication will create significant burdens, and is potentially confusing for investors because it relates to what are narrow and infrequent exceptions rather than issues affecting a large number of clients. Absent a systemic problem associated with transferring assets among firms or one that demonstrates that investors lack sufficient information to make educated decisions, FINRA should not create an overly complex disclosure regime that will create significant, ongoing expenses for firms.

VI. DELIVERING THE EDUCATIONAL COMMUNICATION WITH ACCOUNT OPENING PAPERWORK IS A BETTER SOLUTION

For the reasons stated above, HD Vest does not believe that the proposed Educational Communication is necessary, and will be potentially confusing to clients. However, if FINRA decides to move forward with an Educational Communication, a better and less much less costly approach would be to allow firms the flexibility to send the Educational Communication with account opening paperwork. Existing rules already require firms to send customers prompt written notification after an account is established.[29] Thus, a new disclosure regime would not

[29] *See* 17 C.F.R. § 240.17a-3(a)(17)(i)(B)(1).

need to be created because the delivery requirement can more easily be incorporated into existing processes, thereby significantly lessening the burden on firms.

The Proposed Rule already permits firms to include the Educational Communication with account transfer documentation if the former customer was not solicited by the transferring representative.[30] Therefore, some former customers will receive the communication at that time even though the information it contains is equally applicable to them. This approach is much more sensible because firms can incorporate the Educational Communication into existing processes for delivering information to new clients, and it removes the complexity associated with trying to comply with the Proposed Rule and Reg. S-P.

VII. FIRMS THAT DO NOT PAY MATERIAL RECRUITMENT COMPENSATION SHOULD BE EXCEPTED FROM THE PROPOSED RULE

The Proposed Rule should contain meaningful thresholds that trigger disclosure obligations to minimize the costs and burden of compliance, especially for firms where some or all of the issues are not relevant. The driving force behind Proposed Rule 2243 was the perceived need to highlight potential conflicts of interest if representatives who switched firms were paid significant levels of recruitment compensation. The Proposed Rule has gone well beyond that original intent, and now stands to impose significant costs on every firm. Firms that do not pay material compensation to induce representatives to transfer firms should not be required to send general and irrelevant disclosures to investors. RN 15-19 does not specify whether the members of FINRA's "test group" – or any investor – would find the recruitment compensation disclosures in the Educational Communication helpful if their representative was not in fact paid material recruitment compensation.

For these reasons, HD Vest recommends including a $100,000 *de minimis* exception in any rule that is adopted – the same approach FINRA previously proposed.[31] A one-size-fits-all" approach is deeply flawed.

VIII. DELIVERY OF THE EDUCATIONAL COMMUNICATION SHOULD NOT BE REQUIRED FOR APPLICATION WAY ACCOUNTS

Firms should not be required to deliver the Educational Communication when a former customer holds an account directly with a product sponsor, e.g., a mutual fund company or an insurance company, and the only change is a substitution of broker-dealers associated with their account. Broker-dealer of record change requests are routinely processed by product sponsors, and do not even potentially raise the concerns addressed in the Educational Communication with respect to brokerage account transfers. If the recruiting firm has a servicing or dealer agreement with the product sponsor and the recruiting firm can continue to service a customer's mutual

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[30] *See* Proposed Rule 2271(b)(2).

[31] *See* Proposed Rule 2243, *supra* note 4, at 2. FINRA defined recruitment compensation as including upfront payments, such as cash bonuses or forgivable loans, and potential future payments, such as performance-based bonuses or special commission schedules that are not provided to similarly situated registered persons.

fund or variable product, the Educational Communication will add no value and instead will cause greater confusion.

IX. Firms Should Be Permitted To Send An Alternative Educational Communication

While HD Vest does not believe the Proposed Rule is necessary or warranted, if it is adopted firms should be permitted to deliver an alternative educational communication. FINRA should amend the rule to allow firms to create their own educational communications as long as agreed-upon universal disclosure language is included. This would allow firms to brand their own educational communication, and include it in other documents that may already be provided instead of having to include a completely separate document. Additionally, firms should be allowed to customize an educational communication by providing relevant their telephone numbers that would inform investors who to call with specific questions.

X. Responses to FINRA's Specific Requests for Comment

A. Customers Should Not Be Required To Affirm Receipt of the Educational Communication.

Customers should not be required to affirm receipt of the Educational Communication, nor should they be required to acknowledge that they have read the document. Disclosure documents of much greater significance than the Educational Communication are routinely sent to customers and they are not required to affirm receipt. Considering the general "educational" nature of the disclosures – and the fact that many of the disclosures will not even be relevant to most customers – there should be no requirement to have customers affirm receipt. Imposing such a requirement would add additional burdens to the already complex compliance process firms will have to create, and is not warranted.

If this requirement is adopted, FINRA should clarify whether a customer's verbal acknowledgement (to the firm or a transferring representative) is adequate, or whether a written acknowledgement needs to be obtained. A written acknowledgement requirement would add even more unnecessary cost because the Educational Communication does not contain a signature line for capturing customer signatures, so firms would need to devise a separate way to capture the affirmation. Importantly, if this requirement is adopted, FINRA should clarify that memorializing the former customer's affirmation is not a condition precedent to establishing an account. Regardless of the method proposed for tracking affirmations, this requirement would potentially harm customers by significantly slowing down their ability to transfer assets among firms.

B. The Educational Communication Should Only Be Sent To Former Customers.

Firms should not be required to send the Educational Communication to "all customers recruited by or assigned to the transferring representative during the six months after transfer to the recruiting firm." This would expand the requirement to *new* customers (if recruited by the representative) or *existing* customers (if reassigned to the representative by the firm). Expanding the universe of customers who must receive the Educational Communication would increase compliance costs and impose additional tracking burdens that are not warranted. Also, providing Educational Communication to existing customers of the firm makes absolutely no sense because the considerations are relevant only to those transferring assets from another firm.

C. Firms Should Only Be Required To Send The Educational Communication For Two Months.

Requiring firms to send the Educational Communication for a period of two months instead of six months is appropriate because transferring representatives typically contact former customers to discuss changing firms in the first two months of joining a new firm. Shortening the delivery requirement time frame would lessen the burden on firms and maximize the effectiveness the Educational Communication may offer investors.

* * *

In sum, the Proposed Rule would be very difficult (if not impossible) to comply with, and would impose significant costs on member firms. On the other hand, it will not materially enhance customer protection because the considerations addressed are not widespread and customers already receive sufficient information to make decisions when there are limited exceptions. Rules with very high costs and marginal potential benefit should not be adopted. HD Vest urges FINRA not to adopt this Proposed Rule, especially in its current form.

Sincerely,

Eric Chartan
Associate General Counsel
HD Vest Financial Services

Gregory B. McShea
Senior Vice President
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July 10, 2015

Via e-mail: pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20549-1090

Re: FINRA Regulatory Notice 15-19

Dear Ms. Asquith:

Janney Montgomery Scott LLC ("Janney") appreciates the opportunity to comment on FINRA Regulatory Notice 15-19, the proposed FINRA Rule 2272 – Educational Communication Related to Recruitment Practices and Account Transfers ("RN 15-19" or the "Proposal"). Janney is a full service financial services firm headquartered in Philadelphia, Pennsylvania with approximately 100 offices along the East Coast and as far west as Ohio. Janney has enjoyed a proud 183 year history of providing investment services to retail investors and, today, through over 700 financial advisors, manages over 300,000 client accounts. As such, Janney is keenly aware of its regulatory obligations and is committed to providing investment solutions to its clients that are both suitable and designed to help them meet their financial goals. Janney agrees these goals must be coupled with transparent communications and disclosures that allow our customers to make informed decisions, including when transferring their accounts to Janney. To this end, Janney supports FINRA's efforts to enhance investor protection and provide plain English disclosures regarding possible conflicts of interest throughout the investment process. In this regard, the interests of Janney and FINRA are aligned.

Janney initially commented on Regulatory Notice 13-02 regarding recruitment compensation practices and was supportive of the comments made by the Securities Industry and Financial Markets Association ("SIFMA") in its April 2014 response to proposed FINRA Rule 2243[1]. We applaud FINRA for withdrawing its 2014 proposal and appreciate the subsequent changes FINRA has proposed in RN 15-19. We generally agree with and support the Proposal in that it addresses many of the problems with the 2014 proposal including, among other things, privacy concerns, restraint on trade and fair competition, and the administrative burdens that would have been imposed by that proposal. Notwithstanding, we offer the following comments with respect to RN 15-19 and the new Proposal:

[1] In addition to the comments made herein, Janney is in support of the comments and other feedback included within SIFMA's comment letter in response to RN 15-19.

The Proposed Disclosure Requirement Should Leverage Existing Industry Practices

As proposed, the obligation to deliver the Educational Communication to former clients of a transferring financial advisor is predicated on a multi-tiered structure of written and verbal communications that hinges on both the mode of initial customer contact and whether that communication served as an "attempt to induce" the former customer to transfer assets to the new firm. RN 15-19 does not define what "attempt to induce" means for purposes of the Proposal, nor do we think it should. Rather than attempt to define a triggering "inducement" under the Proposal, we submit a more concrete and objective approach be taken. To avoid the conjecture and compliance risk inherent in determining, on a customer by customer basis, whether a verbal or written inducement has occurred, we submit that the "triggering event" for providing the Educational Communication be based on existing industry practices that currently, and uniformly, occur upon account transfer. Specifically, the Educational Communication will be most effectively and efficiently delivered when the new firm (or its agent) sends new account paperwork to the financial advisor's former customers. By using the delivery of new account paperwork as the triggering event, member firms will be able to leverage existing controls and procedures, thereby mitigating the risk of non-compliance, and uniformly provide clients considering transfer the opportunity to raise important timely questions prior to transfer.

Shorten the Required Disclosure Period from 6 Months to 90 Days

Janney also recommends shortening the period during which the Educational Communication must be provided from 6 months to 90 days. Our experience informs us that most customers transfer their assets to the new firm within the first 8 to10 weeks after the financial advisor's hire. Thus, allowing for an additional two to four weeks beyond that period provides ample opportunity for transferring customers to be fairly and fully informed of the transfer, and be given plenty of opportunity to ask questions. After that time, it becomes more difficult to discern whether account transfer activity is the result of contacts made by a financial advisor upon transfer to the new firm or some other events impacting the clients' lives. After 90 days, any benefit associated with the Educational Communication piece will diminish, while the opportunity for client confusion and compliance failures increase as the bulk initiation of new account paperwork and other communications subside.

The Tone of the Educational Communication Should be More Balanced

Janney is generally in favor of the proposed form of Educational Communication, in that it highlights the various potential conflicts and other concerns a client may wish to discuss when considering transferring firms. However, the proposed language in the Educational Communication may cast the transferring financial advisor in a negative light in favor of the prior firm, or create the opportunity for the prior firm to do so. For example, we do not think it is appropriate for FINRA to suggest that the former customer speak to the old firm about the potential financial incentives the transferring advisor may be receiving at their new firm. Practically speaking, neither the prior firm nor the new advisors assigned to the former customer accounts will be in a position to answer those questions. Further, we know from experience that even though the newly assigned financial advisors don't possess that information, they may be incented to make up their own version of events, potentially in a salacious (and at times slanderous) manner. Accordingly, as much as the Educational Information should be utilized to encourage former clients to receive full and complete disclosures about the incentives and potential conflicts at hand, it should be not be used as a vehicle that may encourage the spreading of misinformation, that casts suspicion by the former firm, or that ultimately serves as a deterrent to a registered representative from electing to transfer from one member firm to another.

Further, as suggested in the attached proposed redline, the Educational Communication should contain comparable language that recommends that the former client also ask the prior firm if they are providing any incentives to the financial advisors who inherit the former clients' accounts and receive economic incentives to retain them. This is a common industry practice, and creates many of the same conflicts that the Educational Communication is intended to address. In all fairness, if it's sensible to suggest that a client raise questions about financial incentives to the departing broker, the same should apply to the receiving broker.

Lastly, the use of the term "broker" throughout the Educational Communication is outdated and does not necessarily reflect the full scope of services today's registered representatives may provide. This term should be replaced with the term "financial advisor", "registered representative" or some similar term. Janney refers to its registered representatives as "financial advisors" as do many, if not most, other member firms.

For the reasons noted above, we recommend several modifications to the Educational Communication as reflected in the proposed redline attached hereto. Once again, thank you for providing Janney the opportunity to comment on RN 15-19. If you have any questions regarding this comment letter, please feel free to contact me directly.

Very Truly Yours,

Gregory B. McShea

Attachment B

Issues to consider when your ~~broker~~ financial advisor changes firms

You're receiving this notice because your ~~broker~~financial advisor has changed firms. If you're thinking about whether to follow your ~~broker~~financial advisor or stay with your current firm, it's a good idea to examine key issues that will help you make an informed decision.

A good relationship with your ~~broker~~financial advisor is surely valuable to you~~, but it's not the only factor in determining what's in your best interest~~. Before making a final decision, talk to your ~~broker~~financial advisor ~~or someone at your current firm~~ about the following questions, and make sure you're comfortable with the answers.

Could financial incentives create a conflict of interest for your ~~broker~~financial advisor?

In general, you should discuss the reasons your ~~broker~~financial advisor decided to change firms. Some firms pay ~~broker~~financial advisors financial incentives when they join, which could include bonuses based on customer assets the ~~broker~~financial advisor brings in, incentives for selling in-house products or a higher share of commissions. Similarly, some firms pay financial incentives to financial advisors to retain ~~brokers or~~ customers. While there's nothing wrong with these incentives in either case, they can create a conflict of interest for the ~~broker~~financial advisor. Whether you stay or go, you should carefully consider whether your ~~broker~~financial advisor's advice is aligned with your investment strategy and goals.

Can you transfer all your holdings to the new firm? What are the implications and costs in you can't?

Some products, such as certain mutual funds and annuities, may not be transferable. If that's the case, you'll face an additional decision in you follow your ~~broker~~financial advisor to the new firm: whether to liquidate the non-transferable holdings or keep just these holdings at your current firm. Either way, there could be costs to you, such as fees or taxes if you liquidate, or different service fees if you leave some assets at the current firm. Your ~~broker~~financial advisor should be able to explain the implications and costs of each scenario.

What costs will you pay-both in the short term and ongoing-if you change firms?
In addition to potential liquidation fees or taxes if you sell non-transferable assets, you may have to pay account termination or transfer fees if you close your current account, or account
opening fees at the new firm. (Even if the new firm waives its fees as an incentive to transfer, that wouldn't reduce any transfer or closure costs at your current firm.) Moving forward, the new firm may have a different pricing structure for maintaining your account or making transactions (such as fee-based instead of commissions, or vice versa), which could increase or lower your account costs. Your ~~broker~~financial advisor should be able to explain the pricing structure of the new firm and how your ongoing costs would compare.

How do the products at the new firm compare with your current firm?
Of course, not all firms offer the same products. While the new firm may offer additional products and services, ~~T~~there may be some types of investments you've purchased in the past or are considering for the future that aren't available at the new firm.

If that happens, you should feel comfortable with the products they offer as alternatives. If you tend to keep a lot of cash in your account, ask what investment vehicles are available at the new firm for the cash sweep account and whether the interest rate would have an effect on your return.

What level of service will you have?
Whether you follow your ~~broker~~financial advisor to the new firm or choose another ~~broker~~financial advisor at your current firm, consider whether you'll have access to the types of service, support and online resources that meet your needs.

FINRA is an independent, not-for-profit organization with a public mission: to protect America's investors by making sure the securities industry operates fairly and honestly. FINRA is not a part of the government, but we play a critical role in safeguarding investors by enforcing high ethical standards, bringing the necessary resources and expertise to regulation, and promoting investor education-all at no cost to taxpayers.

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Jesse D. Hill
Principal

Edward Jones

RECEIVED
JUL 15 2015
FINRA
Office of the Corporate Secretary

July 14, 2015

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

Re: FINRA Regulatory Notice 15-19 – Recruitment Practices

Dear Ms. Asquith:

Edward Jones appreciates the opportunity to submit additional comments on FINRA's proposed Rule 2272 to enhance disclosure to investors about the potential implications of transferring assets when a registered representative moves to a new firm. As stated in our previous letter to FINRA dated April 17, 2014 Edward Jones supports the objectives of the proposed rule and agrees it is important for investors to have the information sufficient to allow them to make fully informed decisions about whether to transfer their account to a registered representative's new firm.

Edward Jones is one of the largest financial services firms in the United States, serving the needs of over seven million U.S. investors through personalized service provided by over 13,500 financial advisors. We focus on serving the needs of the long-term individual investor by promoting an investment philosophy that emphasizes quality and diversification.

We provide the following comments for your consideration.

<u>The Proposed Rule should neither favor nor promote the Protocol for Broker Recruiting</u>

Edward Jones, like many other financial services firms, is not a member of the Protocol for Broker Recruiting. The Protocol for Broker Recruiting was initially established to create a common understanding among the signatories not to sue each other (or their advisors) as long as certain procedures and conditions were followed. The Protocol permits financial professionals to retain a client list with basic contact information and solicit clients without fear of litigation and despite any terms to the contrary in their employment agreement. As a non-protocol firm, we do not permit registered representatives to take client information when they depart for a new firm.

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Jesse D. Hill
Principal

Edward Jones

When a financial advisor leaves Edward Jones to join another financial services provider, our practice has been to send a written notification to the former clients of the departing financial advisor, providing the contact information of the financial advisor at his or her new firm informing them of how Edward Jones will continue to service their account if they stay with the firm. We also at that time provide those clients with an educational communication from the NYSE titled "If Your Broker Changes Firms, What Do You Do?, which is very similar to the document FINRA is proposing in Attachment B of Regulatory Notice 15-19, for our client's review and consideration.

While we have been advised orally by FINRA staff that proposed Rule 2272 does not require Edward Jones to share client information with the former representative or his or her recruiting firm, we respectfully request that FINRA confirm this understanding in the final rule, and to clarify that the rule does not create a presumption in favor of those practices. We believe sharing the client's information with another broker-dealer without the client's permission is a violation of their privacy rights. We believe such clarification is of importance, as arbitrators and other decision makers in litigation will likely look to this rule, at least in part, in actions involving financial advisors changing brokerage firms.

Edward Jones is also concerned that departing representatives could attempt to utilize the proposed rule to excuse themselves from complying with privacy obligations, as well as post-employment or post-registration contractual obligations to their former firms. Typically, transitioning representatives have obligations to maintain the privacy of client information, obligations not to misappropriate trade secrets, and obligations to refrain from soliciting clients. While we believe nothing in the proposed rule, as drafted, would excuse compliance with those obligations; proposed Rule 2272(a) is triggered when the member or associated person "attempts to induce the former customer of that registered person to transfer assets . . .," and proposed Rule 2272(b) discusses the means and timing of delivery of communications to be made when the registered person or member "attempts to induce the former customer to transfer assets to the member." To avoid any confusion, we recommend the addition of supplementary material clarifying that nothing in the rule excuses compliance with applicable privacy, trade secret, or contractual obligations.

<u>Delivery of Disclosure</u>

We appreciate FINRA's recommendation to shorten from ten days to three days the time period for delivery of the disclosure document following oral contact by the recruiting firm or representative. However, we continue to believe the disclosure of recruitment compensation should be provided in writing at the time of the first individualized contact with a former client. Given the significance of the decision

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whether or not to follow the registered representative to a new firm and the important questions to be raised, we believe oral disclosure is inadequate. Further, we believe requiring written disclosure within 3 days is too late as many investors will make a determination about the transfer of their account prior to receiving the written notification.

Conclusion

Edward Jones appreciates the opportunity to provide comments on this rule proposal. We recognize the importance of providing timely, meaningful disclosure to investors so they can make informed decisions about whether to transfer an account to a registered representative's new firm. If you have any questions regarding the comments contained in this letter please contact me at 314-515-9711.

Sincerely,

Jesse Hill
Principal - Government and Regulatory Relations

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July 13, 2014

VIA E-MAIL (pubcom@finra.org)

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

Re: Comment Pursuant To Regulatory Notice 15-19 Regarding The Proposed Rule To Require Delivery Of An Educational Communication To Customers Of A Transferring Registered Representative

Dear Ms. Asquith:

This letter is in response to Regulatory Notice 15-19 (the "Notice"), which seeks comment on a "Proposed Rule" that would require a recruiting firm to provide a FINRA drafted educational communication ("Communication") to the retail customers who the recruiting firm, directly or through the transferring registered representative, attempts to induce to transfer assets or who choose to transfer assets to the recruiting firm. Our firm opposes the Proposed Rule for reasons we set forth below.

INTRODUCTION

Lax & Neville LLP has represented hundreds of registered representatives transitioning between FINRA member firms and as such, is highly familiar with the brokerage firm recruiting process, including, the way the various firms structure their recruiting packages and how registered representatives communicate to their clients that they are transitioning to a new FINRA member firm. Additionally, we also represent institutional and individual investors in FINRA arbitrations alleging sales practice abuses against registered representatives and brokerage firms. As such, we are also familiar with what information is material to customers and the mechanisms or schemes through which disreputable brokers harm their customers. Our unique position qualifies us to offer comment on the Proposed Rule.

The Proposed Rule seeks to address purported conflicts of interest, but takes an overreaching stance, which will result in more harm than good. FINRA has failed to establish that a conflict, or even a potential conflict, exists in every broker transition. Nonetheless, to remedy a presumed conflict, FINRA proposes that a Communication be provided at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm. However, the Communication does not provide balanced information to customers and invites confusion, including the assumption of a conflict of interest where no such conflict of interest may exist. As such, the Proposed Rule could potentially hinder a registered representative's ability to transition between firms, disrupt the negotiating power between registered representatives and FINRA member firms, prevent smaller FINRA member firms from recruiting talent from larger firms, alarm customers when no conflict of interest exists, and thus potentially have an adverse effect on competition in the industry as a whole.

Additionally, FINRA's methodology, including the "Investor Testing" and "Economic Impacts" sections of the Notice are insufficient because they fail to consider material factors including: 1) whether any of the information contained in the Communication is material to investors' decisions to potentially transfer their assets; 2) how the Protocol for Broker Recruiting may or may not addresses issues contained in the Notice; and 3) how existing FINRA rules already protect customers from the harm addressed by the Notice. Furthermore, FINRA's failure to establish a code of conduct for how member firms should respond to customer inquiries prompted by the Communication could easily create confusion or litigation without any clear avenue for relief to the transitioning registered representative or recruiting firm. By failing to consider these issues in its methodology, FINRA has failed to perform an adequate public interest analysis for the Proposed Rule.

I. The Notice Does Not Establish That A Real Or Potential Conflict Exists In Every Transition

The Proposed Rule would require FINRA member firms to distribute a Communication to retail customers that warns of a potential conflict of interest without first establishing that a real or potential conflict exists in every transition. Nowhere in the Notice does FINRA staff show that a real or potential conflict exists in every transition. In fact, the only mention to one exists in Regulatory Notice 13-02, where FINRA Staff cited to concerns of Mary Shapiro, then Chairwoman of the Securities Exchange Commission ("SEC"), regarding how certain enhanced compensation practices may pressure registered representatives to increase their level of production in order to justify their enhanced compensation. Before making a rule to address a presumed conflict of interest, FINRA should first identify and define the conflict with particularity, its frequency, and the possible harm arising directly from it. Here, FINRA has failed to do so and as such, the Proposed Rule is entirely premature.

The problem with assuming that enhanced compensation practices create a conflict of interest is that registered representatives are always incentivized to increase production, just as any person who sells a product or service. Registered representatives, who are just below the next level of a grid payout are incentivized to increase their production to reach the higher grid payout. The fact that the grid may differ from one FINRA member firm to another does not establish a measurable conflict of interest between the registered representatives and their customer because registered representatives' incentive to reach his or her performance goals is constant. Furthermore, the incentive to reach the next level of grid payout exists at all times, for all registered representatives, and is not enhanced by the mere fact of a registered representative's transition between firms. The Proposed Rule requires a Communication be sent to customers during transitions, but no FINRA rule, nor should any rule, requires a similar communication every time a registered representative is close to reaching the next grid threshold.

Here, the Proposed Rule appears arbitrary in requiring a Communication be sent to a customer in one circumstance due to a presumed conflict, but not in another related circumstance. As such, any potential conflict that could exist from enhanced compensation practices is sufficiently attenuated from a registered representative's transition between member firms. Therefore, a registered representative's transition should not be the basis for sending the Communication or the basis of a FINRA rule seeking to correct potential conflicts arising from enhanced compensation practices.

Additionally, for a registered representative with all fee-based clients, FINRA and the SEC have not identified any potential conflict of interest. Similarly, for recruiting packages that pay back-end bonuses only based upon assets under management hurdles, no potential conflicts have been identified. As such, FINRA staff has failed to establish that a real of potential conflict exists in every transition and requiring that a Communication be sent to customers in every transition is the type of overreaching rulemaking would create more harm than good.

II. The Communication Does Not Provide Balanced Information

The Proposed Rule is not well designed to inform investors of any potential conflict of interest and the direct and indirect impacts of transferring assets to a new firm because the Communication does not provide balanced information to customers. Specifically, the Communication invites a negative inference about the transitioning registered representative's motivation. For example, the section, "Could financial incentives create a conflict for your broker?" suggests that one already exist. Furthermore, the section contains no balancing language explaining how FINRA member firms compensate registered representatives and that the customer's registered representative may have already benefitted from enhanced compensation practices at his or her former FINRA member firm as well as at their current one. Because the Communication does not contained balanced language, it will confuse customers and make it more difficult for them to weigh the relevant information needed to decide whether they should transfer their assets to the recruiting FINRA member firm.

Additionally, it is also unclear why FINRA informs the customer to "talk with your broker or someone at your current firm" when the current FINRA member firm is in no position to comment on the recruiting firm, or the transitioning registered representative's compensation at their new firm and will simply attempt to have the customer remain at their firm. Moreover, in my experience, FINRA member firms will sometimes offer the clients discounted fees as an inducement to not follow the transitioning registered representative to the new FINRA member firm. FINRA staff has not addressed this practice in the Notice. Furthermore, the Communication provides no guidance to customers either informing them of this practice, or warning them how that practice may conflict with their long term investment goals. As such, the Communication will confuse customers by providing unbalanced information.

III. The Notice's Methodology Is Flawed

The Notice's purported methodology is flawed and fails to consider material information in at least three areas: 1) the Notice's "Investor Testing" section; 2) the Notice's failure to address or consider the Protocol for Broker Recruiting; and 3) the Notice's failure to consider how the purported harm it seeks to redress is already covered by other FINRA rules. Each flaw in the methodology will be addressed below.

a. The Notice's "Investor Testing" Section Is Self-Serving And Does Not Establish That Any Of The Information Contained In The Communication Is Material

The "Investor Testing" section of the Notice is self-serving and flawed. The section is self-serving because FINRA Staff only sought to ask investors whether they found the information helpful and as a result, reached the unsurprising conclusion that information is helpful. While some of the sample of investors in the section stated that the information was meaningful, the Notice does not state what that information was, and why it was meaningful. Significantly, none of the investors were asked if the information in the Communication was material to their decisions to transfer assets. Because materiality is a key issue for all communications between FINRA member firms and the public, merely stating that the information is helpful is a self-serving conclusion that fails to demonstrate the usefulness of the Proposed Rule.

Additionally, the Notice's methodology is deeply flawed as FINRA Staff did not test a crucial aspect of the Proposed Rule. The Communication is designed to get the customer to ask questions of their new and old FINRA member firms. However, the study detailed in the "Investor Testing" section did not run any simulations where the sample of customers reached out to their hypothetical FINRA member firms for information in response to the Communication. Moreover, the "Investor Testing" section did not indicate whether the sample of investors felt more or less inclined to reach out to their registered representative, the recruiting firm, or their former FINRA member firm after receiving the Communication. As such, the Notice is critically devoid of any study showing that customers sought answers to questions arising from the Communication and after customers reached out to their new and old FINRA member firms, the customers had enough information to make an informed decision.

b. The Notice's Methodology Does Not Address The Broker Protocol Or Establish Why It Is Deficient In This Case

Established in 2004, the Protocol for Broker Recruiting ("Protocol") is an agreement between hundreds of FINRA member firms regarding registered representatives' transitions between firms. The Protocol was established with "[t]he principal goal of … further[ing] the clients' interests of privacy and freedom of choice in connection with the movement of their registered representatives between firms." Additionally, the Protocol requires "[t]he signatories to this protocol agree to implement and adhere to it in good faith."

Here, the Notice is deficient because it does not mention the Protocol and as such fails to examine: 1) how the Protocol fails to address the issues addressed by the Notice; 2) how the Proposed Rule conforms to or conflicts with a FINRA member firm's existing duties as signatories to the Protocol; and 3) what a FINRA member firm's obligation are where the new duties arising under the Proposed Rule may conflict with its duties under the Protocol. By failing to address or even acknowledge this very significant agreement, between leading industry members, to self-regulate the transition of registered representatives between FINRA member firms, the methodology of the Proposed Rule is deeply flawed.

c. The Notice Seeks To Protect Investors From Harm Already Directly Addressed Through Existing FINRA Rules

Through the Proposed Rule, the Notice seeks to indirectly protect investors from sales practice abuses that are already directly prohibited by existing FINRA rules. For example, FINRA Rule 2111 requires that "A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer." Additionally, FINRA Rule 2010 requires members to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business. Finally, FINRA Rule 2020 prohibits FINRA member firms and registered representatives from effecting "any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance." Together, these rules, along with other FINRA rules, directly prohibit the type of sales practice abuses addressed in the Notice. To the extent that these rules do not deter broker misconduct, it is unlikely that requiring delivery of the Communication will sufficiently deter that misconduct. More importantly, the Notice fails to address how the Proposed Rule will protect the public in any way that is not duplicative of these existing rules.

IV. <u>The Proposed Rule Will Create More Litigation</u>

The Protocol was drafted to establish a good faith code of conduct for signatory firms in order to limit the litigation arising from registered representatives' transitions between FINRA member firms. Here, the Proposed Rule fails because it does not establish any code of conduct to govern FINRA member firms' responses to customer inquiries prompted by the Communication. By failing to establish a code of conduct, the Proposed Rule will likely create increased litigation between transitioning registered representatives, the recruiting firm, and the former FINRA member firm. Furthermore, that litigation or the threat of litigation will have an adverse effect on competition and register representative's mobility within the industry.

The Proposed Rule will likely create increased litigation because the Communication directs customers to contact their former FINRA member firm, in order to solicit information about the recruiting firm, during a sensitive and potentially contentious time between the two firms. However, outside of FINRA Rule 2010 that establishes general conduct requirements, there is no FINRA rule explicitly stating that the former FINRA member firm's responses must be truthful, accurate, balanced or fair. As such, the Proposed Rule will potentially create litigation by establishing a grey area that invites FINRA member firms to interfere with registered representatives' transitions in an attempt to retain their customers.

As discussed above, some FINRA member firms will seek to retain the clients of a departed registered representative by offering discounted, or even no fees for a set period of time. This practice will almost certainly create litigation. For example, assume that a registered representative ("RR") leaves broker-dealer 1 ("BD1") for broker-dealer 2 ("BD2") and provides his customers with a copy of the Communication as provided by the Rule. BD1 reassigns RR's customer account to a new registered representative (the "New RR"). When RR's customers contact BD1 at FINRA's advice, they are put in contact with the New RR who says "RR charged you too much in the past, we'll waive your fees for the next year if you stay with our firm." This statement is arguably defamatory and as such, RR could pursue a claim against BD1 through arbitration.

Additionally, because there is no FINRA rule directly prohibiting this conduct, aggrieved parties may have difficulty prosecuting their rights through FINRA arbitration. Again, assume that RR leaves BD1 for BD2 and provides his customers with a copy of the Communication as provided by the Rule. RR's customers call BD1 as suggested by the Communication and BD1's branch manager makes false, unfair, or unbalanced oral statements regarding BD2, but nothing regarding RR. Here, RR may not have a direct cause of action against BD1 because BD1 did not make any defamatory statement against him or her. Furthermore, BD2 may have difficulty prosecuting a claim in arbitration because the alleged inflammatory statements may be truthful yet misleading or unbalanced.

Enacting the Proposed Rule will either result in increased litigation costs associated with transitioning between firms or stifle competition in the industry, or both. The Proposed Rule will increase litigation costs because it invites FINRA member firms to interfere with registered representatives' transitions between firms. In turn, registered representatives and recruiting firms will seek to enjoin that practice or to recover the damages arising from it. However, due to the fact that there is no clear pathway to relief, some registered representatives may turn down favorable recruitment offers, which could benefit the registered representative and their customers, out of an apprehension that their current firm will interfere with the transition. Finally, some smaller firms may be hesitant to recruit talent from larger firms because they may not be able to incur the costs associated with such litigation. As such, the Proposed Rule has significant direct and indirect costs that will differentially affect FINRA member firms, and ultimately stifle competition in the industry.

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V. Because FINRA Has Failed To Consider Many Relevant Factors, The Notice's "Economic Impacts" Section Contains An Inadequate <u>Public Interest Analysis</u>

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), FINRA must submit to the SEC a "concise general statement of the basis and purpose" of any proposed rule. Section 15A(b)(9) of the Act requires the SEC to determine that FINRA rules "do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." When reviewing a proposed FINRA rule, the SEC is required to consider whether an action is necessary or appropriate and as part of its public interest analysis under Section 3(f) of the Act, the SEC must "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation." To aid the SEC in its consideration of rule proposals, the SEC's Form 19b-4 requires each FINRA rule filing to include a statement regarding the burden on competition.

FINRA maintains that it meets these requirements by performing economic impact assessments that provide "a formal way of organizing the evidence on the key effects, good and bad, of the various alternatives that should be considered in developing regulations." *See* Office of Management and Budget, Circular A-4 (September 2003). However, the economic impact assessment in the Notice only addresses the compliance costs associated with establishing a written supervisory procedure reasonably designed to insure compliance with the Proposed Rule and delivery of the Communication. Notably missing is an analysis on the economic impact of the increased litigation that will follow the Proposed Rule and the affect that litigation will have on competition. Furthermore, balancing these costs against the benefits of the Proposed Rule is impossible at this time because the "Investor Testing" section of the Notice contains an insufficient analysis as well. Without these assessments the Notice likely fails to perform an adequate public interest analysis under Section 3(f) of the Act.

<u>CONCLUSION</u>

The Proposed Rule is not well designed to reduce alleged conflicts relating to enhanced recruitment compensation practices and instead could harm registered representatives' interests with no practical purpose. Before any action is taken, FINRA should identify and narrowly define the specific conflict it seeks to redress, draft a communication that provides balanced information to customers, establish a code of conduct for FINRA member firm communications to customers in response to inquiries arising from the Communication, perform a full and complete analysis of how effective the Communication is, as well as an economic impact assessment of potential litigation costs associated arising from the communication and its effect on competition in the industry.

Very truly yours,

<u>/s/ Brian J. Neville</u>
Brian J. Neville, Esq.

Lincoln Financial Network
A member of Lincoln Financial Group

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July 13, 2015

By Electronic Mail (*pubcom@finra.org*)
Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 15-19 (Recruitment Practices)

Dear Ms. Asquith:

Lincoln Financial Network (LFN or Lincoln) is the marketing name for Lincoln Financial Group's two dually-registered broker-dealers/investment adviser entities: Lincoln Financial Advisors Corp. and Lincoln Financial Securities Corp.[1] LFN appreciates the opportunity to submit this comment letter in response to Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 15-19.

LFN maintains an affiliation with over 8,200 financial advisors, which include registered representatives, investment advisor representatives, insurance brokers and agents. LFN frequently recruits advisors from other FINRA broker-dealers and offers advisors an open architecture business model, allowing them the ability to offer a variety of investment products and solutions. As part of its recruitment efforts, LFN may offer forgivable loans to offset the expenses that advisors incur when transitioning.

I. Background

In January 2013, FINRA proposed that hiring firms disclose the actual transition or forgivable loan dollars paid to an advisor when he or she moved between firms. A significant number of firms commented on this proposal believing that the proposal obstructed fair competition and violated an advisor's right to privacy. Many firms also provided reasonable alternatives to alert investors to conflicts of investors without disclosing such private economic information.

In March 2014, FINRA filed proposed Rule 2243 (*Disclosure and Reporting Obligations Related to Recruitment Practices*) with the SEC. Rule 2243 proposed additional obligations of a registered representative and its hiring firm regarding disclosure of transition compensation. Rule 2243 included two primary components: (1) an obligation to disclose a range of compensation to former retail customers

[1] LFN is an affiliate of Lincoln Financial Group, the marketing name for Lincoln National Corporation (LNC), whose other affiliated companies act as issuers of insurance, annuities, retirement plans and individual account products and services, including but are not limited to, The Lincoln National Life Insurance Company ("LNL"); Lincoln Life and Annuity Company of New York ("LLANY") and Lincoln Financial Distributors, Inc. ("LFD"), Lincoln's wholesaling arm, a broker-dealer registered with the SEC and a member of FINRA.

who were solicited to transfer accounts to a new firm and (2) a reporting obligation to FINRA if a transferring registered representative received a significant increase in compensation after moving to a new broker-dealer. Commentators, including LFN, to proposed Rule 2243 conveyed many of the same concerns as Regulatory Notice 13-02 as well as the operational challenges and effectiveness of the proposed disclosures.[2] Accordingly, FINRA withdrew proposed Rule 2243 in June 2014.

In May 2015, FINRA released Regulatory Notice 15-19 and proposed Rule 2272 (*Educational Communication Related to Recruitment Practices and Account Transfers*). In this third version, there is no obligation to disclose compensation to customers and no obligation to report increased compensation to FINRA. Instead, FINRA now proposes that hiring firms send an educational communication to former retail customers so that they can make better informed decisions on whether to transfer accounts to the recruiting firm.

II. <u>Suggested Changes to the Proposal</u>

LFN supports FINRA's overall efforts to protect investors and better regulate conflicts of interests in recruitment and transition situations. The current version, proposed Rule 2272, is significantly better than the concepts outlined in Regulatory Notice 13-02 and proposed Rule 2243. LFN commends FINRA for conducting investor testing and analyzing the economic impact and other consequences of the prior proposals. LFN suggests that FINRA make a few additional changes to the current proposal in order to achieve a more balanced educational communication and enable Rule 2272 to be operationalized in a more efficient manner.

A. Educational Communication

LFN believes that an educational communication should be sent not just by the hiring firm, but also by the member firm a registered representative departs if that firm attempts to induce the customer to maintain his or her account. As an example, member firms may have an incentive to retain a customer relationship and may pay a reassigned representative a retention bonus if he or she successfully retains customers of the departing registered representatives. This is a conflict of interest and customers should also be aware of this when making an informed decision about whether to stay with one member firm or follow their registered representative to a new member firm. As such, the educational communicational should be sent by any member firm that attempts to induce a customer relationship.

In addition, the educational communication as written needs supplemental content. It should also include questions a customer might consider if a member firm is soliciting a customer to keep their accounts with the firm. The following topics would be helpful for a customer to make an informed decision:

- Does your current firm have a financial incentive to maintain your account that creates a conflict of interest?
- What financial incentives might your current firm be offering a new registered representative to keep you as a customer?
- Does your current firm offer incentives to sell you in-house or proprietary products?

[2] LFN submitted a comment to proposed Rule 2243 on April 17, 2014. That comment can be found at <https://www.sec.gov/comments/sr-finra-2014-010/finra2014010-12.pdf>.

- What costs will you pay – both in the short term and the long-term – if you stay with your current firm?

Supplementing the current educational topics with these additional topics will achieve a more balanced and effective communication to inform the customer's decision.

B. Delivery Requirement

LFN recommends that FINRA simplify the delivery requirements. With all FINRA rules, it is important to develop written supervisory procedures that are reasonably designed to achieve compliance. Unfortunately, a rule that requires delivery of a disclosure document based on an "oral communication" triggering event is complicated, impractical and cannot be operationalized.

As an alternative, LFN recommends that the educational communication be delivered by the hiring firm when account transfer paperwork is delivered (either electronically or in hard copy) to a client. If the educational communication is to be sent by the firm seeking to maintain a customer relationship, the communication should be sent before an account is transferred or reassigned to a new registered representative. These delivery requirements can more easily be developed into written supervisory procedures and can be operationalized. By comparison, supervisory control procedures would be ineffective if "oral communication" was the trigger for delivering an educational communication. Further, with this simpler delivery requirement, testing can be done to ensure compliance.

C. Rule 2272 Amended Text

To facilitate these minor changes, LFN proposes changes to the current text of Rule 2272. A mark-up of the rule language is included in Appendix A.

III. Conclusion

LFN is supportive of FINRA's efforts to provide investors with a more complete picture of the factors involved in a decision to transfer assets to a new firm or maintain accounts with an existing firm. We would encourage FINRA to consider the targeted changes proposed, which ensure a more balanced and effective rule. If you have any questions, please do not hesitate to contact me at 484.583.1413 or carrie.chelko@lfg.com.

Respectfully Submitted,

Carrie L. Chelko, Esquire
Chief Counsel
Lincoln Financial Network

APPENDIX A

2272. Educational Communication Related to Recruitment Practices and Account Transfers

(a) Educational Communication Delivery Requirement

(1) A member that hires or associates with a registered person shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, attempts to induce the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent inducement, transfers assets to an account assigned, or to be assigned, to the registered person at the member.

(2) A member that terminates a registered person or has a registered person voluntarily leave the member shall send an educational communication prepared by FINRA when the member, directly or through another registered person, attempts to induce any customers of the departing registered person to maintain their accounts at the member.

(b) Means and Timing of Delivery

(1) A member shall promptly deliver the educational communication in paragraph (a)(1) when a member or registered person ~~at the time of first individualized contact with a former customer by the registered person or the member that~~ attempts to induce the former customer to transfer assets to the member. The educational communication shall be delivered to the customer with any account transfer paperwork.

(2) A member shall promptly deliver the educational communication in paragraph (a)(2) when a member is attempting to maintain assets. The educational communication shall be delivered to the customer before the customer's accounts are transferred or reassigned to another registered person of the member.

~~(A) If the contact is in writing, the written communication required in paragraph (a) must accompany the written communication. If the contact is by electronic communication, the member may hyperlink directly to the educational communication.~~

~~(B) If the contact is oral, the member or registered person must 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 educational communication must 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.~~

(2) If a former customer attempts to transfer assets to an account assigned, or to be assigned, to the registered person at the member, but no individualized contact with the former customer or inducement by the registered person or member occurs before the former customer seeks to transfer assets, the member shall deliver the educational communication in paragraph (a) to the former customer with the account transfer approval documentation.

(3) The delivery of the communication required by paragraphs (a)(1) and (a)(2) shall apply for a period of six months following the date the registered person departs one member and begins employment or associates with another ~~the~~ member.

LPL Financial

David P. Bergers
General Counsel

75 State Street
Boston MA 02109
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July 13, 2015

By Electronic Mail to pubcom@finra.org

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

Re: *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.[1] 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.

[1] *See* FINRA Regulatory Notice 15-19, available at 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.[2]

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.[3]

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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[2] 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.

[3] *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.[4] 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,[5] 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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[4] *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).

[5] *See* supra note 1 at 10 (third paragraph).

Ms. Marcia E. Asquith
July 13, 2015
Page 4

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

NAIFA

National Association of Insurance and Financial Advisors

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July 2, 2015

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

VIA E-MAIL (pubcom@finra.org)

Re: Proposed Rule Concerning Recruitment Practices (Regulatory Notice 15-19)

Dear Ms. Asquith:

The National Association of Insurance and Financial Advisors (NAIFA) appreciates the opportunity to provide you with comments with respect to the Financial Industry Regulatory Authority (FINRA) proposed rule to require a member firm that hires a registered representative to provide an educational communication to persons who are customers of the representative's previous firm and whom the representative's new firm is seeking to have transfer investment assets to the new firm, as discussed in Regulatory Notice 15-19 (the Proposed Rule).

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

NAIFA commends FINRA for reconsidering its approach to this issue and for carefully evaluating the feedback provided in the numerous comment letters FINRA and the SEC received from interested parties on the rule proposed in Regulatory Notice 13-02. The proposal contained in Regulatory Notice 15-19, requiring that an educational communication be sent to investors who are considering moving their accounts to a representative's new firm, is a less disruptive alternative to the original proposal contained in Regulatory Notice 13-02, which would have required that specific disclosures of dollar-ranges of incentive compensation, among other information, be provided to clients who were being solicited to follow their representative to the new firm.

The educational communication required by the Proposed Rule suggests questions for clients to ask the representative on matters such as any financial incentives the representative received to join the new firm and any costs the customer may incur to transfer his accounts. This approach will effectively serve the purpose of informing consumers of the possible implications of following their representative to a new firm without raising as many privacy and implementation concerns or being as disruptive to the investor/advisor relationship as was the previous proposal's focus on only one aspect of that relationship--the incentive compensation received by a registered representative from the new broker-dealer when the representative changes firms. The Proposed Rule will enable investors to have a "back and forth" conversation with their advisor about issues such as fees received and any problems that may arise with transferring assets to a new firm, which will give consumers the information they need to make an informed choice about whether to move their account to the new firm.

While NAIFA believes the Proposed Rule creates a better balance than the previous proposal between providing investors with useful information and possibly causing investors to perceive conflicts of interest where none exist, we do have the following comments regarding the Proposed Rule:

1. No additional information or additional suggested questions should be included in the educational communication; in fact, FINRA should consider streamlining and

reducing the length and contents of this document wherever possible. (In its current form, it is likely that once font size, formatting, logos, etc. are added the educational communication will be three pages long). More disclosure/information is not necessarily better disclosure—there is a better likelihood that consumers will read and act upon the information in the document when it is brief and to the point.

2. Requiring the customer to affirm, in writing or some other form capable of being preserved, his or her receipt of the educational communication would help to resolve possible disputes down the road about firm/representative compliance with the Proposed Rule. However, since the firm and representative, in most situations, have no control over whether the customer will provide such affirmation of receipt, any requirement to this effect should not impose unreasonable duties, requirements or expectations on the representative or firm. In addition, if language regarding customer affirmation is included in the Proposed Rule it should expressly state that the failure to obtain an affirmation of receipt does not in any way create an implication that the educational communication was not provided.

3. Although, as noted above, NAIFA believes the Proposed Rule is a better way to address FINRA's concerns than the original FINRA proposal, we are still concerned that the educational communication's discussion of compensation and conflicts of interest will cause investors to inordinately focus their attention on compensation issues rather than on more relevant matters such as the net costs to the investor of working with one broker-dealer versus another, the relative advantages of one firm over another with respect to the platform, products and services offered, the performance of the investor's portfolio in relation to the investor's risk profile, and the investor's overall satisfaction with his or her registered representative.

There are many valid reasons why a registered representative may choose to move from one firm to another. The fact that certain incentives were received by the registered representative in connection with such a move should not, in and of themselves, call into question the motivation behind such a move or serve as an indication that any such move was made for any reason other than the best interests of the representative's clients.

4. The scope of the Proposed Rule should not be expanded to apply beyond former retail customers of the representative who changes firms. Given the stated purpose of the Proposed Rule—to address FINRA's concerns "that retail customers may not be aware of important factors to consider in making an informed decision whether to transfer assets to their transferring registered representative's new firm"—and the language used in the Proposed Rule and the Educational Communication, broadening the applicability of the Proposed Rule as suggested in FINRA's Question 3 would be irrelevant and of no benefit to other customers and may in fact lead to increased investor confusion.

Thank you for your consideration of NAIFA's comments on the proposed rule. Please contact the undersigned if you have any questions.

Sincerely,

Gary Sanders

Gary A. Sanders
Counsel and Vice President, Government Relations

gsanders@naifa.org
703-770-8192

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NASAA

July 13, 2015

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

RE: FINRA Regulatory Notice 15-19

Dear Ms. Asquith:

The following comments are in response to FINRA Regulatory Notice 15-19, which requests comments on a proposed rule requiring delivery of an educational communication to customers of transferring registered representatives. NASAA[1] appreciates the opportunity to again express its views on this topic, as it previously submitted a comment letter on March 5, 2013[2] in response to Regulatory Notice 13-02 that subsequently formed the basis for FINRA's rule proposal filed with the SEC in March 2014, which was later withdrawn in June 2014.

NASAA's March 5, 2013 comment letter supported requiring specific written disclosures to customers about enhanced compensation programs particularly where the compensation was based on the representative's future sales performance. NASAA encouraged the requirement of timely, detailed disclosures to customers of actual dollar figures paid to representatives for retaining or moving customer accounts and assets to a new firm, and discouraged the use of vague references to percentage payouts and generalized language.

However, instead of incorporating NASAA's recommendations for specific disclosures into its revised proposal, FINRA reversed course and has introduced a diluted version of its prior proposal. NASAA is disappointed that its prior call for greater transparency into this dark corner of industry practice has not been incorporated into the current proposal.

Failing to require specific, substantive disclosures unfairly shifts the burden to customers to obtain the material information necessary to evaluate potential conflicts of interest created

[1] NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

[2] *See* letter to Marcia Asquith, Office of the Corporate Secretary, FINRA, from A. Heath Abshure, NASAA President and Arkansas Securities Commissioner, dated March 5, 2013, *available at* http://www.finra.org/sites/default/files/NoticeComment/p220087.pdf.

when a representative transitions to a new firm. The lack of disclosure also impedes customer understanding of the possible implications of transferring an account to a new firm. Placing this burden on customers is an inconsistent and unjustified departure from FINRA's recent emphasis on conflicts of interest and putting customers' interests first. NASAA is also concerned that calling the required communication an "educational communication" instead of a "disclosure document" may mislead customers as to the importance of reviewing the document. This makes the disclosure of information ineffectual.

To be effective, any rule governing the disclosure of representative compensation plans should require disclosure of material information including, but not limited to, specific dollar amounts of any bonuses, detailed explanations regarding fee and commission differences between firms, and particular costs and potential tax implications to customers when they liquidate investments to leave one firm and purchase investments at a new firm. Anything less is far removed from the original intent to provide investors with the tools to assess potential conflicts of interest as representatives move from one firm to another.

Furthermore, NASAA suggests that any proposed rule contain specific provisions requiring firms to implement supervisory procedures in relation to transitioning accounts to ensure that the new accounts are overseen and monitored for problems like churning, unsuitable purchases, and failure to disclose fees and costs associated with the new accounts.

Last, the rule should require that any disclosure documents or educational materials be delivered in advance of any communication directed to the customer regarding the transfer of assets to the new firm. Regardless of the form of the communication, customers should be made aware in advance of those communications of the implications of moving their account from one firm to another.

NASAA urges FINRA to revise the proposed rule by: (1) requiring firms to provide specific, substantive disclosure of the financial incentives received by a representative when transitioning within the industry; (2) referring to the required communication as a "disclosure document;" (3) requiring firms to provide specific and detailed disclosure of the potential implications to the customer of transferring assets to the new firm; and (4) requiring the delivery of disclosure materials in advance of any attempt to contact the customer regarding the transfer of an account. Doing so would better align the current proposal with the intent of FINRA's original proposed rule by providing customers with the information needed to make informed decisions about their accounts.

Sincerely,

William Beatty
NASAA President
Washington State Securities Administrator

PIABA
protecting public investors

PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
2415 A Wilcox Drive | Norman, OK 73069
Toll Free (888) 621-7484 | Fax (405) 360-2063
www.piaba.org

July 13, 2015

Via Email Only

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, D.C. 20006-1506
pubcom@finra.org

Re: Regulatory Notice 15-19 (Comment on Revised Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative)

Dear Ms. Asquith:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure. Our members and their clients have a strong interest in FINRA rules relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes in order to protect the rights and fair treatment of the investing public. PIABA submits this comment because although the bar association believes the proposed rule is certainly a positive step, PIABA believes the rule should go farther in terms of education communication content and application.

Background

Pursuant to Section 19(b) of Securities Exchange Act of 1934 (SEA), before becoming effective, a proposed rule must be authorized for filing by the Board of Governors and must be filed with the Securities and Exchange Commission ("SEC") after a mandatory comment period. As such, FINRA is seeking comment on a revised proposed rule.

The prior rule proposal, filed with the SEC in March 2014, had two components: (1) a disclosure obligation to former retail customers whom the recruiting firm attempts to induce to follow a transferring registered representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation. Comments included concerns about the proposal's competitive implications and operational aspects, as well as the effectiveness of the proposed compensation disclosures. FINRA withdrew the initial rule proposal to further consider the comments received.

The current proposed rule would require a member firm that hires or associates with a registered representative (recruiting firm) to provide an educational communication to former retail customers who the member, directly or through the transferring representative, attempts to induce to transfer assets to the recruiting firm or who choose to transfer assets to the recruiting firm. The educational communication would highlight the potential implications of transferring assets to the recruiting firm and suggest questions a customer may want to ask to make an informed decision. The recruiting firm would be required to provide the educational communication at or shortly after the time of first contact with a former retail customer regarding the transfer of assets to the recruiting firm.

Comments

In general PIABA supports the proposed rule because the bar association feels strongly that public investors would benefit from knowing about any potential conflicts of interest an enhanced compensation agreement may foster. However, PIABA believes the educational material, while helpful, does not go far enough. It does not require the firm to actually disclose potential or actual conflicts. It instead merely shifts the burden to investors to ask their current firm or their broker to disclose these conflicts. Moreover, the fact that the broker or current firm is not required to answer the proposed questions (listed on Attachment B) in writing as they relate the customer's particular accounts poses additional concerns regarding the accuracy of those representations and the supervision of such statements. The previous proposal would have provided a mandatory disclosure of any enhanced compensation. PIABA strongly believes that public investors should be informed if their registered representative is being paid additional "enhanced" compensation for merely bringing client assets to his new firm or for generating new commissions and fee income above the usual payout grid during his first few months or years at the firm. Obviously such arrangements may color a representatives recommendations and approach to overall account management.

PIABA, FINRA and the Securities and Exchange Commission (the "Commission") all agree that registered representatives' compensation arrangements may create material conflicts of interest between registered representatives' and public investors' interests. As such, full disclosure of these potential conflicts should be required in any broker and client transfer scenario. In 2009, Mary L. Shapiro, then the Commission's Chairman, released an open letter to the chief executive officers of broker-dealer firms on the issue.[1] In her letter, Chairman Shapiro stated that enhanced compensation arrangements could motivate registered

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[1] SEC Chairman M. Schapiro, Open Letter to Broker-Dealer CEOs (Aug. 31, 2009), available: http://www.sec.gov/ news/ press/2009/2009-189 -letter. pdf

representatives to "churn customer accounts, recommend unsuitable investment products or otherwise engage in investment activity that generates.[2] Similarly, in its October 2013 Report on Conflicts of Interest, FINRA made clear that "Financial compensation is a major source of conflicts of interest. The rewards firms offer associated persons may influence their behavior in ways that affect customer interests.[3]

PIABA wholeheartedly agrees with FINRA's observation that compensation structures may influence registered representatives' behavior and believes that greater efforts should be made to ensure that customers understand their registered representative's compensation. Far too often, retail customers do not understand their financial advisers' compensation or possible conflicts of interest. In 2012, the Commission released its Study Regarding Financial Literacy among Investors (the "Literacy Study").[4] In addition to documenting that most retail investors lack basic financial literacy, the Literacy Study found that retail investors consider information about an investment advisor's fees and conflicts of interest "to be absolutely essential." The Literacy Study also found that retail investors want "to receive disclosure information before making a decision on whether to engage a financial intermediary or purchase an investment product or service." PIABA applauds the revised proposed rule as a step in the right direction but is concerned that it may be too limited to address these problems adequately.

For example, the most recently proposed rule would require the educational communication to be provided to a former customer who seeks to transfer assets to an account assigned or to be assigned, to the representative at the recruiting firm absent contract (e.g., where a customer decides to transfer assets after learning from a general announcement or other sources that his or her registered representative has change firms). In such circumstances, the communication must be included in the account transfer approval documentation. While this is a positive step, the current proposal does not specify supervisory procedures to insure compliance with the mandated communications. PIABA believes that the proposed rule should include supervisory procedures rather than leaving it up to the individual firms to establish and maintain written policies and procedures to ensure compliance. PIABA does not believe it is sufficient to say that FINRA expects that firms can implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures.[5] PIABA also believes the requirement to provide communication should continue to apply for one year from the date the registered representative begins employment or associates with the recruiting firm, as opposed to the six month application currently called for in the proposed rule.[6]

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[2] *Id.*
[3] FINRA, Report on Conflicts of Interest 26 (Oct. 2013), available:
https://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p3S9971.pdf
[4] SEC, Study Regarding Financial Literacy Among Investors (Aug. 2012), available:
https://www.sec.gov/news/studies/2012/917-finoncial-literacy-study-partl.pdf
[5] See FINRA Regulatory Notice 15-19 (May 2015), paragraph 2.
[6] Id at paragraph 3.

Despite supporting the proposal, PIABA believes the rule does not go far enough to combat the magnified conflicts of interest created by enhanced compensation agreements. In particular, FINRA's most recent proposed rule still only requires disclosure of an enhanced compensation agreement if a registered representative moves from one member firm to different member firm. Consistent with FINRA and the Commission's reasoning that enhanced compensation creates disclosure-worthy conflicts, PIABA believes that all enhanced compensation agreements should be disclosed to all of the recruiting firm's customers, not just to the former customers of a registered representative who has changed firms. PIABA's proposed approach would help ensure that all customers receive material information about recommended securities transactions and potential conflicts of interest. Lastly, PIABA believes the new rule should include a requirement that all customers assigned to the transferring broker confirm in writing receipt of the mandated educational communication at or before establishing an account with the recruiting firm.

While the proposed educational communication requirements focus on any enhanced compensation agreements for the recruited registered representative, there are also inherent conflicts of interest when employees of the former firm are provided financial enhancements for retaining the departing broker's clients. PIABA believes FINRA's proposed rule focuses too narrowly on enhanced compensation for registered representatives switching firms. When a registered representative makes the decision to change firms, a scramble for control of the assets in his or her book of business ensues. Given incentives as well as directives from the new firm, the registered representative must contact former clients and persuade them to join him or her at the recruiting firm. With an enhanced compensation agreement, his or her pay may depend on how many clients he or she convinces to switch. There may also be additional incentives for levels of production over a certain period of time after the switch is completed ("Jump Agreements").

Meanwhile, the branch manager or newly assigned brokers at the old firm may receive a bonus or other compensation for how many of the leaving broker's clients they convince to remain at the old firm. FINRA's proposed rule only requires the new firm to disclose enhanced compensation while allowing the old firm to remain silent about any enhanced compensation it may pay for convincing clients to abandon the trusted financial advisor who has changed firms. If the old firm retains a significant number of clients, the transferred registered representative may need to find new clients to generate enough revenue to meet production targets under any enhanced compensation agreement at the new firm. Because these recruitment and retention processes are such fertile ground for conflicts, PIABA believes that the customer should be told about all enhanced compensation agreements, in place, whether they be paid by the new firm or the old. The rule should be extended to include new customers who are subject to the same risks. Surely, a registered representative's new customers deserve the same amount of material information as old customers. Only then, will all clients of the transferring broker be able to make a fully informed decision as to the future management of their assets.

While the proposed rule requires the disclosure of the amount of upfront payments and potential future payments, the proposed educational communication may not adequately explain to customers what the conflict is. Customers should be told if the size of the advisor's upfront compensation is being determined by the amount of commissions generated and assets held at the representative's prior firm for the past twelve months. This is particularly important because advisors are frequently given upfront bonuses based at their trailing 12 month production at their prior firms. This arrangement could incentivize brokers contemplating switching firms to "get their numbers up" in anticipation of the move. This conflict of interest should be disclosed, even if after the fact, to customers so they can reassess the amount of commissions and fees generated from their account prior to the move.

More importantly, the customer should also be told that the advisor will only receive future bonus payments if he or she achieves certain production and/or asset targets over a certain time-frame. The future bonus payments are regularly based on several years of production and/or asset targets. The built-in incentive to hit back-end production targets exposes the customer to the most danger from conflicted financial advisors. The new rule must inform customers how long their commissions may be used to calculate their advisors' back-end compensation. As noted above, the SEC and FINRA both believe that enhanced compensation creates disclosure-worthy conflicts. Therefore, customers must be told how long those enhanced compensation programs will last in order to properly assess their advisor's recommendations against the advisor's personal motivation to hit her back-end targets and receive the additional enhanced compensation.

The most recent proposal, like those that came before, appears to contemplate the educational communication to be sent with the receiving firm's new account documentation package. This would permit the recruiting firm to pack an envelope with voluminous, soporific disclosures, ensuring that few of them will ever be read. PIABA believes that enhanced compensation should be disclosed in writing, on its own, and sent before any account transfer documentation to ensure that retail customers will be able to make an informed decision about whether to change firms. If the disclosures arrive with the account transfer documentation and glossy brochures about the new firm, customers may miss this important education communication. To that end, the enhanced compensation communication should be presented in a clear readable format. Moreover, the disclosure should not only include questions an investor may wish to ask, but should also give answers to at least the following questions:

- What is the registered representative's stated rationale for changing firms?
- Is the registered representative receiving enhanced compensation, and if so, for how long?
- Is any of the enhanced compensation contingent on the registered representative's production at the new firm or on convincing his or her former clients to transfer firms?
- Are fees and commissions computed differently at the new firm?

Conclusion

In summary, PIABA supports FINRA's proposed rule requiring educational communications be sent to retail customers of a recruited broker, disclosing all enhanced compensation agreements and the potential conflicts of interest inherent in such agreements. However, PIABA believes the communication rule does not go far enough and should be expanded to include disclosure of all enhanced compensation plans and should be communicated to all current, former as well as new retail clients. PIABA thanks FINRA for the opportunity to comment on this proposal.

Very truly yours,

Joseph C. Peiffer

Joseph C. Peiffer
PIABA, President

RAYMOND JAMES®

July 13, 2015

VIA ELECTRONIC MAIL (pubcom@finra.org)

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of Educational Communication to Clients of a Transferring Representative

Dear Ms. Asquith:

Raymond James & Associates, Inc. ("**RJA**") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("**FINRA**") proposed rule, as delineated in Regulatory Notice 15-19, which would require delivery of a FINRA-created educational brochure to clients of a registered representative transferring to another member firm (the "**Proposal**").[1]

I. Introduction

RJA is a full service broker-dealer, comprised of 362 branch and satellite offices throughout the U.S. and 4,494 employees. RJA's financial professionals provide asset management, retirement planning, and investment management services to its retail clients. Additionally, RJA is engaged in most aspects of securities distribution, trading, and investment banking. As of March 31, 2015, RJA had $7.4 billion in assets and excess net capital of $405.3 million.

II. Summary of the Proposal

RJA appreciates FINRA's interest in its members' consideration of the Proposal. The Proposal would require a member firm that recruits a registered representative to provide an educational communication to the representative's former retail clients when:

(1) The member, directly or through the transferring representative, attempts to induce the former retail client to transfer assets to the recruiting firm; or

(2) The former client, without inducement, transfers his or her assets to an account assigned, or to be assigned, to the transferring representative.

[1] Regulatory Notice 15-19, FINRA, May 2015, *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf.

FINRA has drafted the proposed educational document, which is included in Regulatory Notice 15-19. The document would highlight the potential implications of transferring assets to the recruiting firm and suggest questions the client may want to ask regarding:

(1) Financial incentives received by the registered representative that may create a conflict of interest;

(2) Potential costs related to transferring assets to the recruiting firm; and

(3) Differences in products and services offered between the client's current firm and the recruiting firm.

The member firm would need to provide the educational communication either at the first time of contact with the former client, or shortly thereafter, depending on the form of contact.

(1) Written Contact: the educational document must accompany the written communication.

(2) Electronic Contact: the recruiting firm may hyperlink directly to the educational communication.

(3) Oral Contact: the recruiting firm must send the educational document to the client within three (3) business days or with any other communication sent by the recruiting firm to the former client in connection with a potential transfer of assets. The recruiting firm or representative must inform the former client that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm.

The recruiting firm or representative must deliver the educational document to any former client who seeks to transfer assets to an account assigned, or to be assigned, to the representative at the recruiting firm even absent contact from the recruiting firm or transferring representative. The recruiting firm must include the educational document with the account transfer approval documentation.

The requirement to provide the educational document would continue to apply for six (6) months following the date that the registered representative begins employment with the recruiting firm.

FINRA indicates that it expects firms to implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures.

III. RJA's Comments on the Proposal

A. RJA Supports FINRA's Goal of Transparency to Investors

RJA supports FINRA's goal of providing retail clients with relevant information to make informed decisions in transferring their assets to a new firm. RJA strides to provide a transparent environment where clients receive plain-English disclosures to help them better understand their investment choices. Therefore, RJA understands the importance of choosing a financial advisor and firm wisely and encourages clients to regularly engage in conversation with their advisors. RJA applauds FINRA's efforts to educate retail clients, as well as FINRA's clear intention to provide such investors with material and timely information.

B. The Proposal Does Not Advance FINRA's Goals

While RJA supports FINRA's goal of providing transparency to investors, the Proposal does not advance FINRA's goal. Rather, the Proposal and the questions it suggests for investors will prompt discussions that are either: (a) immaterial to a client's decision to transfer assets; or (b) require transferring representatives to access clients' account information at the prior firm, which may place the transferring representative and the recruiting firm in violation of federal securities laws or in breach of private agreements.

RJA addresses the Proposal below:

1. Questions about financial incentives

As drafted, the FINRA educational brochure encourages the disclosure of advisors' private financial information with limited value to clients. A financial advisor's decision to transfer firms is often unrelated to compensation. As with any personal career decision, moving one's business involves a multitude of factors, including, but not limited to, differences in each firm's management, potential career opportunities, culture, administrative support, availability of products and services, and geography. These personal factors, along with an advisor's current or future compensation, are generally unrelated to a client's consideration of maintaining a professional business relationship with his or her advisor.

Also, RJA's advisors are already highly regulated by their own firm, FINRA, the states in which they do business, and often by the U.S. Securities and Exchange Commission and others. As such, they are primarily incentivized to act in compliance with a multitude of regulations and work with regulators. Advisors' personal career choices do not influence their advice to their clients. Therefore, questions about financial incentives may lead clients to unfairly suspect their advisor of wrongdoing based strictly on the advisor's compensation package. Any change to an advisor's compensation upon transferring firms does not create a conflict of interest between the advisor and his or her client. Rather, an advisor's primary goal is to meet the investment needs of the client, regardless of compensation. Therefore, RJA believes its financial advisors should not be forced to provide such personal financial information to merely continue a client relationship.

2. Questions about the ability to transfer assets, costs of transfer, and product comparisons between the old and new firms

To properly evaluate the actual cost to a client in moving their investable assets to another firm, a financial advisor would need actual transparency into the client's former investment portfolio. However, a transferring advisor would generally not have access to the detailed account information of his or her former clients. Pursuant to Regulation S-P, a departing representative may not share his or her former clients' account information to the recruiting firm unless several specific criteria are met.[2] The recruiting firm would not have access to whether such third-party information sharing had been approved by any such clients; in fact, the recruiting firm must separately comply with the notice requirements.[3]

In addition, while FINRA members may have signed private agreements outlining the specific client information advisors may retain when transferring between signatory firms, advisors switching between non-

[2] *See* Regulation S-P § 248.10(a)(1) (prohibiting disclosure absent client's failure to opt out within a reasonable timeframe). Some states require opt-in notices. *See, e.g.*, 950 CMR 12.205(9)(c)(13) (in Massachusetts, deeming it dishonest and unethical to "disclos[e] the identity, affairs, or investments of any client to any third party . . . unless consented to by the client").

[3] *See* Regulation S-P § 248.10(b) (mandating compliance regardless of whether the firm and the former client "have an established business relationship").

party firms may still be exposed to possible litigation. For example, the Protocol for Broker Recruiting (the "**Protocol**") allows transferring advisors and their recruiting firms to take a limited amount of client contact information, subject to the Protocol's outlined procedures.[4] However, the Protocol and other inter-firm private agreements do not protect transferring advisors or the recruiting firms if either the former or the recruiting firm is not a signatory. Furthermore, a transferring advisor may have signed non-compete or non-solicit agreements with his or her former firm, barring the advisor from delivering former client data to the recruiting firm or maintaining such data necessary to engage in the specific cost and product comparison conversations FINRA wants to see occur pursuant to the Proposal.

Without the former client's account information, a transferring representative would lack the necessary information to properly evaluate a client's portfolio for differences in product offerings and transfer costs. Improperly accessing such information from the former firm could trigger violations of Regulation S-P and private agreements, resulting in potential litigation for the transferring advisor and the recruiting firm. Therefore, FINRA's intent, while genuine, could unintentionally place firms at odds with other established regulations and agreements.

C. The Proposal Places Significant Challenges on Supervision and Operations

1. Three-Day Notice Requirement

RJA also believes the Proposal fails to acknowledge the difficulty of creating effective supervisory and operational procedures to ensure compliance. RJA is primarily concerned with the challenge of supervising compliance with the Proposal's three-day notification period for delivering an educational communication after oral contact with former clients. Unfortunately, the Proposal does not provide clarity as to exactly when an oral conversation between a transferring representative and a former client becomes an attempt to induce the transfer of assets. Furthermore, conversations subject to the proposed rule may occur prior to the representative joining the member firm without the recruiting firm's knowledge or consent. Because of the difficulty in determining when the exact date of inducement occurred, RJA is concerned that it may not have the ability to implement a systematic method of supervising compliance with the three-day period.

The three-day notification process also presents operational challenges to member firms. A recruiting firm would have to rely on a transferring advisor's immediate reporting of oral communications with his or her former clients before sending the educational brochure. Moreover, large firms, like RJA, that attract a significant number of transferring advisors would be disadvantaged as they must send a sizeable number of brochures in only three days. Ultimately, the three-day window would create operational complexities and inefficiencies that FINRA should consider alongside the benefits of investor education and transparency.

Given the problems with effectively conducting and supervising delivery, RJA agrees with the Securities Industry and Financial Markets Association ("**SIFMA**") and the Financial Services Institute ("**FSI**") in the comment letters they have filed with FINRA regarding the Proposal and recommends that the rule require brochure delivery to the client with the account transfer documentation. Aligning the delivery of the brochure with the transfer process would resolve any ambiguity regarding the exact timing of a transferring representative's oral contact with a former client. Also, the former client would still have the opportunity to ask any and all questions prompted by the brochure prior to opening the account.

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[4] Protocol for Broker Recruiting, Bressler, Amery & Ross P.C., 2004, *available at* http://www.bressler.com/broker-protocol.

2. *Six-Month Application of Rule*

RJA is also concerned that the delivery requirement extends for six months after the financial advisor's transfer date, while the majority of a transferring advisor's solicitations would typically occur shortly after they transfer firms to avoid the risk of losing the client. The extended supervisory timeframe proposed by FINRA increases supervisory responsibility with immaterial benefit to the client. Therefore, RJA agrees with SIFMA that the delivery requirement should only last for 90 days after the advisor's transfer date.

Additionally, pursuant to the Proposal, recruiting firms would have to confirm the delivery of brochures to the former firm's clients. Without any way to monitor communication with such clients, the recruiting firm would have to directly communicate with the former firm's clients to verify compliance. As previously mentioned, such communication may raise privacy concerns under Regulation S-P or may violate private agreements. At worst, the recruiting firm's communication may result in costly litigation with the former firm.

D. The Proposal Imposes Significant Compliance Costs on Member Firms

Even if an effective supervisory procedure existed, the training, implementation, and maintenance of such supervisory controls would present considerable costs for member firms. To ensure that former clients are receiving FINRA's educational communication, RJA would have to undertake the training of financial advisors, compliance employees, and supervisory professionals. Implementing such new supervisory requirements could necessitate adding staff to monitor required activity and could increase costs associated with required technology and systems.

Although FINRA has provided an alternative electronic delivery option, compliance with the rule will still require the physical delivery of brochures to clients who have not provided electronic contact information. The costs of mailing brochures to these clients include production and delivery expenses, as well as the addition or update of systems to supervise and support delivery.

E. The Proposal Disparately Impacts Larger Firms

Furthermore, the Proposal may have a disparate impact on larger firms, like RJA, that attract advisors with a significant number of clients. Firms recruiting advisors with substantial books of business would inherently require the delivery of a greater number of brochures to satisfy the Proposal's delivery rule. As a result, monitoring delivery of such brochures in a timely manner may prove costly for large broker-dealers. As RJA attracts a significant number of talented, successful financial advisors from competing firms, RJA opposes any rule that places a disproportionate amount of costs onto larger firms without significant benefits for retail clients.

Ms. Marcia Asquith
July 13, 2015
Page 6 of 6

IV. Conclusion

While RJA supports FINRA's goal of empowering clients to make informed decisions about choosing their financial advisor, RJA believes that the significant supervisory and operational challenges and compliance costs outweigh the limited benefit for a transferring representative's former clients. Therefore, while RJA recognizes FINRA has the best intentions with this Proposal, the unintended consequences are substantial and RJA respectfully requests FINRA's reconsideration.

Sincerely yours,

Tash Elwyn
President, Raymond James & Associates, Inc.

RAYMOND JAMES®

SCOTT A. CURTIS
President, Raymond James Financial Services

July 13, 2015

VIA ELECTRONIC MAIL (pubcom@finra.org)

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of Educational Communication to Clients of a Transferring Representative

Dear Ms. Asquith:

Raymond James Financial Services, Inc. ("**RJFS**") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("**FINRA**") proposed rule, as delineated in Regulatory Notice 15-19, which would require delivery of a FINRA-created educational brochure to clients of a registered representative transferring to another member firm (the "**Proposal**").[1]

I. Introduction

RJFS is one of the leading diversified financial services companies in the U.S., associating with 3,422 financial professionals in 2,100 branch and satellite offices throughout the U.S. RJFS registered financial advisors generally provide holistic wealth management advice, including college, retirement, charitable giving, and estate planning to their retail clients. RJFS also provides advisory services for banks and credit unions, as well as their clients. As of March 30, 2015, RJFS had $216 billion in assets under administration and excess net capital of $24 million.

II. Summary of the Proposal

RJFS appreciates FINRA's interest in its members' consideration of the Proposal. The Proposal would require a member firm that recruits a registered representative to provide an educational communication to the representative's former retail clients when:

(1) The member, directly or through the transferring representative, attempts to induce the former retail clients to transfer assets to the recruiting firm; or

(2) The former client, without inducement, transfers his or her assets to an account assigned, or to be assigned, to the transferring representative.

[1] Regulatory Notice 15-19, FINRA, May 2015, *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf.

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Raymond James Financial Services, Inc.

FINRA has drafted the proposed educational document, which is included in Regulatory Notice 15-19. The document would highlight the potential implications of transferring assets to the recruiting firm and suggest questions clients may want to ask regarding:

(1) Financial incentives received by the registered representative that may create a conflict of interest;

(2) Potential costs related to transferring assets to the recruiting firm; and

(3) Differences in products and services offered between the client's current firm and the recruiting firm.

The member firm would need to provide the educational communication either at the first time of contact with the former client, or shortly thereafter, depending on the form of contact.

(1) Written Contact: the educational document must accompany the written communication.

(2) Electronic Contact: the recruiting firm may hyperlink directly to the educational communication.

(3) Oral Contact: the recruiting firm must send the educational document to the client within three (3) business days or with any other communication sent by the recruiting firm to the former client in connection with a potential transfer of assets. The recruiting firm or representative must inform the former client that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm.

The recruiting firm or representative must deliver the educational document to any former client who seeks to transfer assets to an account assigned, or to be assigned, to the representative at the recruiting firm even absent contact from the recruiting firm or transferring representative. The recruiting firm must include the educational document with the account transfer approval documentation.

The requirement to provide the educational document would continue to apply for six (6) months following the date that the registered representative associates with the recruiting firm.

FINRA indicates that it expects firms to implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures.

III. RJFS' Comments on the Proposal

A. RJFS Supports FINRA's Goal of Transparency for Investors

RJFS supports FINRA's goal of providing retail clients with relevant information to make informed decisions in transferring their assets to their former advisor registered with a new firm. RJFS strides to provide a transparent environment where clients receive plain-English disclosures to help them better understand their investment choices, services, and related prices. Therefore, RJFS understands the importance of choosing a financial advisor and firm wisely and encourages clients to regularly engage in conversation with their advisors. RJFS applauds FINRA's efforts to educate retail clients, as well as FINRA's clear intention to provide such investors with material and timely information.

B. The Proposal Does Not Advance FINRA's Goals

While RJFS supports FINRA's goal to provide transparency to investors, the Proposal does not advance FINRA's goal. Rather, the Proposal and the questions it suggests investors raise prompt discussions that are either: (a) immaterial to a client's decision to transfer assets; or (b) require transferring representatives to access clients' account information at the prior firm, which may place the transferring representative and the recruiting firm in violation of federal securities laws or in breach of privacy agreements.

RJFS addresses the Proposal below:

1. Questions about financial incentives

As drafted, the FINRA educational brochure encourages the disclosure of advisors' private financial information with limited value to clients. A financial advisor's decision and primary motivation to transfer firms is frequently unrelated to compensation. As with any personal career decision, moving one's business involves a multitude of factors, including but not limited to geography, management responsiveness, service levels, desire for independent business ownership, and potential career opportunities. These personal factors, along with an advisor's current or future compensation, are generally unrelated to clients' considerations of maintaining a professional business relationship with their advisors.

Additionally, RJFS's advisors are already highly regulated by their own firm, FINRA, the states in which they do business, and often by the U.S. Securities and Exchange Commission and others. As such, they are primarily incentivized to act in compliance with a multitude of regulations and work with regulators. Advisors' personal career choices and firm affiliation decisions typically do not influence the advice provided to their clients. Therefore, questions about financial incentives would lead many former clients to unfairly suspect their advisor's motivation based strictly on the advisor's compensation package. Changes in an advisor's compensation due to transferring firms do not necessarily create a conflict of interest between the advisor and his or her client. Rather, an advisor's primary goal is to meet the investment and financial needs of their clients, regardless of compensation. Therefore, RJFS believes its financial advisors should not be forced to provide such personal financial information to simply continue a client relationship.

2. Questions about the ability to transfer assets, costs of transfer, and product comparisons between the old and new firms

To properly evaluate the actual cost to a client in moving their investable assets to a successor firm, a financial advisor would need actual transparency into the client's former investment portfolio. However, a transferring advisor would generally not have access to the detailed account information of his or her former clients. Pursuant to Regulation S-P, a departing representative may not share his or her former clients' account information to the recruiting firm unless several specific criteria are met.[2] The recruiting firm would not have access to whether such third-party information sharing had been approved by any such clients; in fact, the recruiting firm must separately comply with the notice requirements.[3]

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[2] *See* Regulation S-P § 248.10(a)(1) (prohibiting disclosure absent client's failure to opt out within a reasonable timeframe). Some states require opt-in notices. *See, e.g.*, 950 CMR 12.205(9)(c)(13) (in Massachusetts, deeming it dishonest and unethical to "disclos[e] the identity, affairs, or investments of any client to any third party . . . unless consented to by the client").

[3] *See* Regulation S-P § 248.10(b) (mandating compliance regardless of whether the firm and the former client "have an established business relationship").

In addition, while FINRA members may have signed private agreements outlining the specific client information advisors may retain when transferring between signatory firms, advisors switching between non-party firms may still be exposed to possible litigation. For example, the Protocol for Broker Recruiting (the "**Protocol**") allows transferring advisors and their recruiting firms to take a limited amount of client contact information, subject to the Protocol's outlined procedures.[4] However, the Protocol and other inter-firm private agreements do not protect transferring advisors or the recruiting firms if either the former or the recruiting firm is not a signatory. Furthermore, a transferring advisor may have signed non-compete or non-solicit agreements with his or her former firm, barring the advisor from delivering former client data to the recruiting firm or maintaining such data necessary to engage in the specific cost and product comparison conversations FINRA wants to see occur pursuant to the Proposal.

Without the former client's account information, a transferring representative would lack the necessary information to properly evaluate a client's portfolio for differences in product offerings and transfer costs. Improperly accessing such information from the former firm could trigger violations of Regulation S-P and private agreements, resulting in potential litigation for the transferring advisor and the recruiting firm. Therefore, FINRA's intent, while genuine, could unintentionally place firms at odds with other established regulations and agreements.

C. The Proposal Places Significant Challenges on Supervision

1. Three-Day Notice Requirement

RJFS also believes the Proposal fails to acknowledge the difficulty of creating effective supervisory and operational procedures to ensure compliance. RJFS is primarily concerned with the challenge of supervising compliance with the Proposal's three-day notification period for delivering an educational communication after oral contact with former clients. Unfortunately, the Proposal does not provide clarity as to exactly when an oral conversation between a transferring representative and a former client becomes an attempt to induce the transfer of assets. Furthermore, conversations subject to the proposed rule may occur prior to the representative joining the member firm – particularly in the instances of independent representatives transitioning to another independent broker-dealer. Because of the difficulty in determining when the exact date of inducement occurred, RJFS is concerned that implementing a systematic and consistent method to supervise compliance with the three-day period is impossible.

The three-day notification process also presents operational challenges to member firms. A recruiting firm would have to rely on a transferring advisor's immediate reporting of oral communications with his or her former clients before sending the educational brochure. Moreover, large firms, like RJFS, attracting a significant number of transferring advisors would need to send a sizeable number of brochures in only three days. Ultimately, the three-day window would create operational complexities and inefficiencies that FINRA should consider alongside the benefits of investor education and transparency.

Given the problems with effectively conducting and supervising delivery, RJFS agrees with the Securities Industry and Financial Markets Association ("**SIFMA**") and the Financial Services Institute ("**FSI**") in the comment letters they have filed with FINRA regarding the Proposal and recommends that the rule require delivery to the client with the account transfer documentation. Aligning the delivery of the brochure with the transfer process would resolve any ambiguity regarding the exact timing of a transferring representative's oral contact with a former client. Also, the former client would still have the opportunity to ask any and all questions prompted by the brochure prior to opening the account.

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[4] Protocol for Broker Recruiting, Bressler, Amery & Ross P.C., 2004, *available at* http://www.bressler.com/broker-protocol.

2. *Six-Month Application of Rule*

RJFS is also concerned that the delivery requirement extends for six months after the financial advisor's transfer date, while the majority of a transferring advisor's solicitations would typically occur shortly after they transfer firms to avoid the risk of losing the client. The extended supervisory timeframe proposed by FINRA increases supervisory responsibility with immaterial benefit to clients. Therefore, RJFS agrees with SIFMA that the delivery requirement should only last for 90 days after the advisor's transfer date.

Additionally, pursuant to the Proposal, recruiting firms would have to confirm the delivery of brochures to the former firm's clients. Without any way to monitor communication with such clients, the new firm would have to directly communicate with the former firm's clients to verify compliance. As previously mentioned, such communication may raise privacy concerns under Regulation S-P or may violate private agreements. At worst, the recruiting firm's communication may result in costly litigation with the former firm.

D. <u>The Proposal Imposes Significant Compliance Costs on Member Firms</u>

Even if an effective supervisory procedure existed, the training, implementation, and maintenance of such supervisory controls would present considerable costs for member firms. To ensure that former clients are receiving FINRA's educational communication, RJFS would have to undertake the training of financial advisors, compliance employees, and supervisory professionals. Implementing such new supervisory requirements could necessitate adding staff to monitor required activity and could increase required technology and systems, increasing the cost of supervision and compliance.

Although FINRA has provided an alternative electronic delivery option, compliance with the rule would still require the physical delivery of brochures to clients who have not provided electronic contact information. The costs of mailing brochures to these clients include production and delivery expenses, as well as the addition or update of systems to supervise and support delivery.

E. <u>The Proposal Disparately Impacts Larger Firms</u>

Furthermore, the Proposal may have a disparate negative impact on larger firms attracting advisors with a significant number of clients. Firms recruiting advisors with substantial books of business would inherently require the delivery of a greater number of brochures to satisfy the Proposal's delivery rule. As a result, monitoring delivery of such brochures in a timely manner may prove costly for larger firms. As RJFS attracts a significant number of talented, successful financial advisors from competing firms, RJFS opposes any rule that places a disproportionate amount of costs on larger firms without significant benefits for retail clients.

Ms. Marcia Asquith
July 13, 2015
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IV. Conclusion

While RJFS supports FINRA's goal to empower clients to make informed decisions about selecting their financial advisor and firm, RJFS believes the requirements associated with the proposed rule create significant supervisory challenges and incremental costs – especially with respect to the three day brochure delivery requirement. Therefore, while RJFS recognizes FINRA has the best intentions with this Proposal, the unintended consequences are significant and RJFS respectfully requests FINRA's reconsideration.

Sincerely yours,

Scott Curtis
President
Raymond James Financial Services, Inc.

sifma

Invested in America

July 13, 2015

By Electronic Mail to ***pubcom@finra.org***

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20549-1090

Re: **FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association[1] ("SIFMA") appreciates the opportunity to respond to FINRA's request for comment on Regulatory Notice 15-19 ("RN 15-19" or the "Proposal"), a proposed rule to require delivery of a FINRA-created educational communication (the "Educational Communication") to customers of a transferring representative.[2]

SIFMA has a long standing public record of supporting plain English disclosure to investors of material terms and potential material conflicts of interest at pivotal points in the investment process.[3] Without qualifying the foregoing, SIFMA submits the comments below to address various operational challenges that may serve to limit the usefulness and ability to reasonably comply with the Proposal. SIFMA also suggests several other

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[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See generally* RN 15-19, available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf (last visited July 6, 2015).

[3] *See, e.g.*, SIFMA Comment Letter on Regulatory Notice 13-02, available at http://www.finra.org/sites/default/files/NoticeComment/p220092.pdf (last visited July 7, 2015); SIFMA Comment Letter on FINRA Regulatory Notice 10-54, available at: http://www.sifma.org/issues/item.aspx?id=22482 (last visited July 7, 2015); and SIFMA Comment Letters on SEC Rulemaking under Dodd-Frank Section 913, available at http://www.sifma.org/issues/item.aspx?id=8589934675 (last visited July 7, 2015).

changes to the Proposal to improve its effectiveness without compromising its underlying goals.

I. Background

SIFMA appreciates FINRA's efforts to obtain input from its member firms regarding the revised proposal in RN 15-19.[4] FINRA's Proposed Rule 2243, initially filed with the Securities and Exchange Commission ("SEC") in March 2014, included two core elements:

- A disclosure obligation to former retail customers who a recruiting firm attempts to induce to follow a transferring registered representative; and

- A reporting obligation to FINRA where a transferring representative receives a significant increase in compensation.

The disclosure obligation would have required a recruiting firm to disclose to former customers ranges of recruitment compensation that the transferring representative has received or will receive in connection with changing firms. The initial proposal included various additional components, including disclosures related to costs incurred to transfer assets and portability of assets.[5]

Commenters raised various issues with Proposed Rule 2243, including concerns about the proposal's competitive implications, operational aspects, and the effectiveness of the proposed recruitment compensation disclosures.[6] In June 2014, FINRA withdrew the

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[4] FINRA previously solicited comment on the proposal in *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243*, Securities Exchange Act Rel. No. 71786 (Mar. 24, 2014), 79 FR 17592 (Mar. 28, 2014) (SR-FINRA-2014-010, "Proposed Rule 2243") and FINRA Regulatory Notice 13-02 ("RN 13-02"), *available at* http://www.finra.org/Industry/Regulation/Notices/2013/P197600) (last visited July 6, 2015). SIFMA filed a comment letter in response to Proposed FINRA Rule 2243, *available at* https://www.sec.gov/comments/sr-finra-2014-010/finra2014010-13.pdf and a comment letter in response to Regulatory Notice 13-02, *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p220092.pdf (last visited July 6, 2015).

[5] *See generally id.*

[6] *See, e.g.,* Committee of Annuity Insurers, available at http://www.annuity-insurers.org/wp-content/uploads/2014/05/Comment-Letter2.pdf (last visited July 8, 2015); Financial Services Institute, available at http://www.sifma.org/issues/item.aspx?id=8589948662 (last visited July 8, 2015); Financial Services Roundtable, available at https://www.sec.gov/comments/sr-finra-2014-010/finra2014010-15.pdf (last visited July 8, 2015); and SIFMA, available at http://www.sifma.org/issues/item.aspx?id=8589948662 (last visited July 8, 2015). SEC list of comment letters can be found at https://www.sec.gov/comments/sr-finra-2014-010/finra2014010.shtml (last visited July 8, 2015). Comments filed on RN 13-02 available at http://www.finra.org/industry/notices/13-02 (last visited July 8, 2015).

initial proposal.[7]

II. Overview of the Proposal

The Proposal generally would require delivery of an Educational Communication to certain retail customers by a member firm that associates with a registered representative ("recruiting firm") who has former customers transfer assets to the recruiting firm. The Educational Communication focuses on certain considerations for a customer who is contemplating transferring assets to the recruiting firm by highlighting the potential implications of transferring assets to the recruiting firm and suggesting questions the customer may want to ask to make an informed decision.

FINRA proposes a complex, multi-tiered structure for delivery of the Educational Communication that is dependent on the mode of initial contact with a customer regarding the transfer of assets to the recruiting firm:

1. If the contact is in writing, then the Educational Communication must accompany the written communication;

2. If the contact is by electronic communication, then the recruiting firm may hyperlink directly to the Educational Communication;

3. If the contact is by oral communication, then the Educational Communication must be sent within three business days or with any other documentation sent by the recruiting firm in connection with a potential transfer of assets, whichever is earlier;

4. If the customer seeks to transfer assets to the recruiting firm on an unsolicited basis (*e.g.*, after learning from a general announcement or other sources his or her registered representative has changed firms), then the Educational Communication must be included with the account transfer approval documentation; and

5. If the customer expressly states that she is not interested in transferring assets to the recruiting firm but, without further individualized contact, subsequently decides to transfer assets to the recruiting firm within the subject time period of the Proposal, then the Educational Communication must accompany the account transfer approval documentation.

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[7] *See Notice of Withdrawal of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices)*, Securities Exchange Act Rel. No. 72459 (June 24, 2014), 79 FR 36855 (June 30, 2014), available at http://www.finra.org/industry/rule-filings/sr-finra-2014-010 (last visited July 7, 2015).

The requirement to provide the Educational Communication would continue to apply for six months after the registered representative begins employment with the recruiting firm.

III. EXECUTIVE SUMMARY

In this section of the comment letter, SIFMA summarizes some of its general comments on the Proposal. A detailed discussion of each of these issues is included in the various sections of this comment letter.

- ***SIFMA Supports Disclosure of Material Terms*:** Consistent with SIFMA's longstanding support of disclosure and investor education, SIFMA supports FINRA's efforts to create simple, plain-English disclosures that permit investors to make informed choices.

- ***The Proposal Raises Various Operational Issues*:** FINRA should address various operational challenges to better align the Proposal's direct and indirect costs with its stated goals. Specifically, FINRA should:

    - Include a uniform delivery obligation in the Proposal and should tie the delivery of the Educational Communication to existing processes;

    - Remove the "attempt to induce"/"inducement" concept from the Proposal; and

    - Apply the delivery obligation for 90 days to maximize effectiveness.

- ***The Proposal Should Include Exceptions for De Minimis Recruitment Compensation and Non-Recruiting Contexts*:** The Proposal's Supplementary Material should include exceptions to properly narrow the scope of the delivery obligation to contexts in which recruitment compensation serves as a significant motivating factor for a registered person to change firms.

- ***FINRA Should Permit Firms to Alter the Focus of the Educational Communication in Appropriate Contexts*:** Financial incentives for representatives changing firms appear to be the primary focus of the Educational Communication. In contexts where such financial incentives are not present the Educational Communication may confuse or mislead former customers. Under these circumstances, firms should be permitted to alter the discussion topics contained in Educational Communication to exclude topics that are not relevant to a particular case.

- ***FINRA Should Replace the Use of "Broker" in the Educational Communication with a Term More Commonly Used in the Industry***: SIFMA requests that "broker" be replaced with "registered representative", "registered person", or "financial advisor", as these terms are more commonly used within in the industry, particularly in communications with customers.

IV. SIFMA Supports Disclosure of Material Terms

SIFMA supports disclosures that remind customers to think about and ask important questions when contemplating the transfer of assets to a new member firm in connection with a registered representative moving to the new firm. Consistent with SIFMA's longstanding support of disclosure and investor education, SIFMA supports FINRA's efforts to create simple, plain-English disclosures that permit investors to make informed choices. Better informed investors benefit everyone by fostering strong and vibrant securities markets.

V. FINRA Should Address Various Operational Challenges Raised by the Proposal

SIFMA has long supported the core disclosure principles that underlie the Proposal. SIFMA, however, believes that FINRA needs to address various operational challenges to better align the Proposal's direct and indirect costs with its stated goals. So that the Proposal may achieve a better balance between its costs and its usefulness to investors, the following issues should be addressed:

A. FINRA Should Include a Uniform Delivery Obligation in the Proposal and Should Tie the Delivery of the Educational Communication to Existing Processes

The Proposal's multi-tiered delivery obligations for the Educational Communication are operationally complex, costly, and inefficient. The multi-tiered delivery obligations are also problematic from a compliance perspective, particularly with respect to monitoring for, and relying on prompt self-reporting of, oral communications with former customers regarding asset transfers to a recruiting firm. The degree of improvement for investor protection between each respective tier does not justify the overall costs of such a complex regulatory structure.

1. Delivery with Other Account Opening Documentation

SIFMA acknowledges the important benefits of customers receiving the Educational Communication early in the account transfer process. This important objective, however, must be balanced with the Proposal's undue operational complexities, costs, and inefficiencies. A uniform delivery requirement that would apply consistently across the various modes of customer contact regarding the transfer of assets to a recruiting firm would be operationally efficient and less costly.

The Educational Communication, for example, could be delivered with the account transfer documentation. As an existing process with established systems, it would be relatively simple, efficient and inexpensive to tie the Educational Communication to the delivery of account transfer documentation. Indeed, the Proposal already allows for the Educational Communication to be included with "account transfer documentation" if the customer's asset transfer to the recruiting firm was unsolicited.[8] SIFMA suggests that such treatment be given to all asset transfers under the proposed rule.

Delivery of the Educational Communication with the other account transfer documentation also would be beneficial for and convenient to the customer, who will receive the Educational Communication as part of a single new account package. The Educational Communication would be included with other informational items, such as margin disclosures, that currently are provided at the account opening stage and would permit the customer to have a complete set of disclosures at a single point of time rather than different disclosures at different stages. Importantly, before completing the new account paperwork and committing to open an account with the recruiting firm, former customers would continue to have sufficient time to take appropriate action in connection with the Educational Communication.

2. *Remove Unworkable Delivery Requirements Associated with Oral Contacts*

At a minimum, the requirement that the Educational Communication be delivered within three (3) business days of an oral contact should be removed from the Proposal. Such a requirement presents costly implementation and significant compliance challenges that far outweigh any potential benefits. SIFMA believes it is more efficient and effective to deliver the Educational Communication at the same time as other account opening disclosures.

B. FINRA Should Remove the "Attempt to Induce"/"Inducement" Concept

Under the Proposal, the requirement to provide the Educational Communication is triggered by an "attempt to induce" or by the actual transfer of assets to an account attributed to the transferring representative. Proposed FINRA Rule 2272(a) provides, in relevant part:

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[8] *See* Proposed FINRA Rule 2271(b)(2) (RN 15-19 at 8-9), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf (last visited July 6, 2015).

> A member that hires or associates with a registered person shall provide to a former customer ... an educational communication prepared by FINRA when (1) the member, directly or through that registered person, **attempts to induce** the former customer of that registered person to transfer assets or (2) the former customer of that registered person, **absent inducement**, transfers assets to an account assigned, or to be assigned, to the registered person at the member. (emphasis added).[9]

Proposed Rule 2272 and the related Supplementary Materials do not, however, define what it means to "attempt to induce" or what an "inducement" is for purposes of the proposed rule. SIFMA believes that the inducement concept included in the Proposal lacks sufficient specificity to permit firms to create reasonably designed supervisory and compliance controls around the requirement.

SIFMA believes that the operational, compliance and collateral concerns raised by an unclear and imprecise inducement concept can be addressed by replacing the "attempt to induce"/"inducement" concept with a delivery obligation triggered by the delivery of the new account opening documentation.[10] Firms currently provide other written disclosures to customers during the account opening process, including, but not limited to, business continuity plans pursuant to FINRA Rule 4370(e), margin disclosure statements pursuant to FINRA Rule 2264, SIPC information pursuant to FINRA Rule 2266, and the existence of a carrying agreement pursuant to FINRA Rule 4311. The Educational Communication can uniformly be provided at the same time as these other disclosures without compromising investor protection while also providing firms with a more cost effective and reasonable regulatory standard.

SIFMA believes that investors are not served by hazy and imprecise regulatory standards, particularly when those standards relate to disclosure requirements.

C. Delivery Obligation Should Apply for 90 days to Maximize Effectiveness

SIFMA believes that the usefulness of the Educational Communication will become outweighed by the cost of compliance with the Proposal after a significant period of time has elapsed since the hiring or association of a registered representative with the recruiting firm. When changing firms, registered representatives have a business interest to facilitate customer asset transfers to the recruiting firm soon after.[11] SIFMA believes a

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[9] *See* Proposed FINRA Rule 2272(a), RN 15-19 at 8, available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf (last visited July 7, 2015).

[10] *See* Section V.A of this comment letter.

[11] In its earlier proposal, FINRA acknowledged that "most customers who transfer assets to the recruiting firm do so soon after the representative changes firms . . . ." Proposed Rule 2243, *supra* note 4, at 52. One

90-day period would be more appropriate in light of registered representatives' incentives, including quarterly fees, to transition former customers to the recruiting firm in a timely fashion.

FINRA did not identify the underlying rationale for its proposed six-month time period in the Proposal. If FINRA has data or other support for the proposed timeframe, SIFMA would be interested in reviewing and commenting on such support. Educational Communications provided to customers six months after a registered representative has been with a new member firm are unlikely to have a material impact on an investor's decision to transfer assets to the "new" member firm. Conversely, as time passes and the value of the Educational Communication for investors decreases, the cost and complexity of complying with the Proposal increases because of the time and resources that firms must dedicate to identifying a decreasing number of potential "former customers."

So that the benefits and costs of the Proposal may be better aligned, SIFMA believes the Proposal should require that the Educational Communication be provided to former customers from the date of hire or association and continue for a period of 90 days.

VI. Supplementary Material Should Include Exceptions from the Proposal's Delivery Obligation for De Minimis Recruitment Compensation and Non-Recruiting Contexts

Proposed Rule 2243's focus was to enable a former customer to make an informed decision in connection with transferring assets to a recruiting firm, "taking into account the financial incentives that may motivate a representative to move firms and induce a customer to follow."[12] In the preamble to proposed Rule 2243, FINRA further stated that it attempted to "strike[ ] an appropriate balance to increase transparency with respect to recruitment practices without creating unnecessary costs or burdens on members or their representatives"[13] by, among other things, establishing a de minimis exception for "recruitment compensation" not exceeding $100,000.[14]

RN 15-19 does not include an exception similar to the de minimis exception included in proposed Rule 2243. SIFMA believes the Proposal should include exceptions to properly narrow the Proposal's scope to contexts in which recruitment compensation serves as a significant motivating factor for a representative to change firms.

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of SIFMA's member firms estimates that 75% of former customer assets transfer within eight to ten weeks after a transferring representative has joined the firm.

[12] Proposed Rule 2243, *supra* note 4, at 16.

[13] *Id.* at 60.

[14] FINRA defined recruitment compensation as including upfront payments, such as cash bonuses or forgivable loans, and potential future payments, such as performance-based bonuses or special commission schedules that are not provided to similarly situated registered persons. *Id.* at 2.

A. Exception from Delivery Obligation for Recruitment Compensation Not Exceeding $100,000

SIFMA believes the Proposal should include an exception from the delivery obligation for recruitment compensation not exceeding $100,000. Consistent with FINRA's prior proposal, a $100,000 threshold "creates a reasonable de minimis exception" at a level where recruitment compensation is a "lesser motivating factor[] for a representative to move."[15]

Many firms, large and small, do not pay significant recruitment compensation beyond reasonable transition assistance that falls well below the previously proposed disclosure thresholds. Accordingly, in many cases recruitment compensation – which serves as the basis of the Proposal – either is not present or does not rise to a level that justifies the Proposal's costs and burdens on firms and their registered representatives.

The focus of the Educational Communication continues to be on recruitment compensation that will not be present under many arrangements, thereby making it confusing, if not misleading, to many transferring customers. Therefore, SIFMA requests that FINRA include in the Supplementary Material an exception from the delivery requirement for arrangements that do not include recruitment compensation in excess of $100,000.

B. Exception from Delivery Obligation for Non-Recruitment Contexts

SIFMA believes the Proposal should include an exception from the delivery obligation for contexts that do not involve individual representative recruitment, such as bulk transfers in connection with mergers and acquisitions or changes to a bank's networking arrangement. In such circumstances, concerns about recruitment compensation – which appears to be the basis of the Proposal – are less likely to be prevalent (or present at all). FINRA, therefore, should except these situations from the Proposal because the financial incentives contemplated by the Proposal either are not present or are less likely to be prevalent.

VII. FINRA SHOULD PROVIDE THE OPTION FOR FIRMS TO ALTER THE FOCUS OF THE EDUCATIONAL COMMUNICATION

SIFMA suggests that the Proposal include an option for firms to alter the Educational Communication to more directly align with the specific situation of each firm.[16] As stated above, many firms do not provide "incentive" compensation to transferring representatives, and various situations that require registered persons to change

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[15] *Id.* at 10.

[16] In its prior proposal, FINRA provided firms with the flexibility to create their own disclosure documents. *See* Proposed Rule 2243, *supra* note 4, at 12-13.

firms, such as mergers, do not involve recruitment of individual representatives as contemplated in FINRA's original proposal.

The Educational Communication ultimately may confuse former customers if firms are not provided with the option to adjust the focus and content of the document to more directly align with the realities of each firm's situation. For example, former customers might be misdirected or confused by a document that focuses on "incentive" compensation when the particular situation involving a transferring representative does not involve recruitment compensation.

SIFMA believes that the dangers of potential investor confusion can be mitigated by permitting firms to alter the Educational Communication. The Educational Communication should include a free text section in which the recruiting firm or transferring representative may include contextual information. In addition, firms should have the option of removing discussion topics that are inapplicable under the circumstances. For example, when a recruiting firm does not pay recruitment compensation to a transferring representative, the Educational Communication should not be required to include a discussion of potential conflicts associated with the payment of financial incentives. Other applicable disclosures would continue to apply.

VIII. FINRA Should Clarify That Delivery of the Educational Communication Should Not Be Used for Any Purpose Other Than to Determine Compliance with the Proposal

SIFMA is concerned that delivery of the Educational Communication could be used in other contexts, such as litigation and arbitration. SIFMA believes that FINRA should address this concern by clarifying that the Proposal only governs disclosure obligations, and delivery of the Educational Communication shall not be used as evidence for any other purpose, including determining when and if a former customer has been solicited.

IX. Terminology Used in the Educational Communication Should Conform with Terms Currently Used by the Industry

SIFMA believes that the Educational Communication can be improved if the term "broker" is replaced with "registered representative", "registered person", or "financial advisor". For many SIFMA member firms, "broker" is a dated term that is no longer used in marketing, customer disclosure, customer account and related documents. FINRA's previous proposal (FINRA Rule 2243) referred to "registered person", which SIFMA believes is a better description of the transferring representative.[17]

[17] *See generally* RN 13-02 and Proposed Rule 2243, *supra* note 4.

X. Supplementary Material Should Address Transfers of Dual Hatted Persons

A member firm may, at times, hire or associate with a registered representative that was associated with a member firm that is dually registered as an investment adviser and a broker-dealer. The Supplementary Materials should address scenarios where a registered representative of a firm dually registered as an investment adviser and a broker-dealer transfers to a new firm. Where the registered representative may have served as an investment adviser representative that will be associated in the same capacity with the new firm, or may become associated as a registered representative of a broker-dealer, the Educational Communication may not be applicable. Where the registered representative served as a broker-dealer representative, the disclosure is appropriate as to former customers.

XI. Conclusion

SIFMA reiterates its support for plain English disclosure to investors of material terms and potential material conflicts of interest at pivotal points in the investment process. SIFMA believes that addressing the comments noted above would further the principals and purpose of the Proposal with greater efficiency and effectiveness. SIFMA looks forward to a continuing dialogue and working together on these important issues.

If you have any questions or require further information, please contact Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA, at (202) 962-7386 (kzambrowicz@sifma.org), or Stephen Vogt, Assistant Vice President & Assistant General Counsel, SIFMA, at (202) 962-7393 (svogt@sifma.org).

Very truly yours,

Kevin Zambrowicz
Associate General Counsel &
Managing Director

Stephen Vogt
Assistant Vice President &
Assistant General Counsel

Cc: Marlon Paz, Locke Lord

I have been a PIABA member since 1991. I write in opposition to RN 15-19.

The proposed rule would place an undue burden on a broker's ability to switch from one member firm to another. As a result of the proposed rule, even when a brokerage firm is engaging in improper or unethical behavior, a broker employee of that firm will be hesitant to switch companies out of fear that the switch will cause him or her to lose a substantial portion of their business. Plus, the rule does not have a similar provision for client notifications in the event an employing firm pays a retention bonus to a broker. The absence of such a provision reveals the true nature of the proposal, that is, an industry device to tie brokers to their employing firms. Brokers should be free to service their customers at the firm's that they believe to be most able to ethically meet their customers' needs. There should be no impediment adopted by FINRA to interfere with that process.

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THE LEADERS GROUP

July 13, 2015

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street
Washington, DC 20006
Via email: pubcom@finra.org

RE: FINRA Regulatory Notice 15-19 Request for Comment

Dear Ms. Asquith:

The Leaders Group, Inc. appreciates the opportunity to provide you with comments with respect to the Financial Industry Regulatory Authority (FINRA) proposed rule to require a member firm that hires a registered representative to provide an educational communication to persons who are customers of the representative's previous firm and whom the representative's new firm is seeking to have transfer investment assets to the new firm, as discussed in Regulatory Notice 15-19 (the Proposed Rule)..

While we agree that customers should be informed if a representative is receiving cash compensation as a recruitment inducement to change firms; and customers should be informed if the transfer will cause them charges or changes to their accounts, the proposal may cause undue confusion for the customers when a simple change of broker dealer of record is all that is requested and no costs to the customer will be incurred.

In the independent contractor model broker dealer, recruitment bonuses and forgivable loans are not common. Representatives most often change firms to benefit their clients and their practices. The platforms and products offered by the new firm are often more beneficial to the customer. When assets are held away, as in the case of variable insurance products and direct help mutual funds, no changes are made to the accounts; just the broker dealer of record is changed.

We particularly have concerns about the means and timing of the delivery of such communication. In firms with remote locations, meeting the three day requirement would be difficult to meet because of transmission time to the OSJ. Incorporating the communication into the SEC required 17a-3 verification letters would be a potential solution to this and would not add substantial direct or indirect costs to the recruiting firm. No matter the timing of delivery, the educational communication should be reduced to one page to increase the likelihood of being read and comprehended by customers and to reduce the burden on environmental resources.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

ZJRiley

Z. Jane Riley, CSCP®
Chief Compliance Officer
The Leaders Group, Inc.

Wells Fargo Advisors, LLC
Regulatory Policy
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Member FINRA/SIPC

July 13, 2015

Via E-mail: ***pubcom@finra.org***

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

RE: Regulatory Notice 15-19: Recruitment Practices – FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative, set forth in Regulatory Notice 15-19 (the "Proposal").[1]

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in 6,610 retail bank branches across the United States.[2] WFA is a non-bank affiliate of Wells

[1] Regulatory Notice 15-19, Recruitment Practices – FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (May 2015). http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf
[2] Wells Fargo & Company ("Wells Fargo") is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

Fargo & Company, whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. PRIOR PROPOSAL

In March of 2014, FINRA filed a proposal[3] with the SEC containing two components: (1) a disclosure obligation to former retail customers who the recruiting firm attempts to induce to follow a transferring registered representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation.

The disclosure obligation in the initial proposal would have required a member recruiting firm to disclose to former customers ranges of recruitment compensation that the representative has received or will receive in connection with moving firms and the basis for that compensation. It would have also required disclosure if a former customer would incur costs to transfer assets to the member firm that would not be reimbursed and if any of the former customer's assets were not transferable to the recruiting firm. Lastly, this proposal would have required disclosure for up to one year following the date the registered representative began employment or associated with the recruiting firm.

While we generally supported the 2014 proposal, we joined many in the industry in expressing concerns about the proposal's competitive implications and operational aspects, as well as the effectiveness of the proposed compensation disclosures. Subsequently, in June 2014, FINRA withdrew the proposal.

II. CURRENT PROPOSAL

Under this revised Proposal, "[a] member that hires or associates with a registered representative shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, attempts to induce the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent inducement, transfers assets to an account assigned, or to be assigned, to the registered person at the member." [4]

The Proposal outlines the timing for the delivery of the educational communication, requiring that the member deliver the communication "at the time of first individualized contact with a former customer by the registered person or the member that attempts to induce

[3] FINRA File No. SR-FINRA-2014-010 – Proposed Rule Change to Adopt FINRA Rule 2243 - Disclosures and Reporting Obligations Related to Recruitment Practices
[4] Proposed Rule 2272(a)

the former customer to transfer assets to the member." [5] Further, the timing of the delivery of the educational communication is dependent upon the method of contact. If the contact is in writing, the educational communication must accompany the written communication.[6] If the contact is oral, the member must notify the former customer an educational communication that includes important information in deciding whether to transfer assets to the member will be provided no later than three (3) business days after the contact. [7] Furthermore, the delivery of the educational communication shall apply for a period of six (6) months following the date the registered person begins employment or associates with the member. [8]

FINRA states the goal of this Proposal is to provide former customers with a more complete picture of the potential implications of a decision to transfer assets to a new firm. WFA recognizes the importance of this goal and offers the following suggestions to make the Proposal workable.

A. FINRA Should Remove the "Attempt to Induce" Language from the Proposal and Make the Timing of Delivery of the Educational Communication Consistent

Proposed Rule 2272(a) provides that a member firm will need to provide the disclosure at the point it "attempts to induce" the customer to transfer assets. However, FINRA does not provide a definition nor examples of what activities constitute an 'attempt to induce'. Without this clarification, WFA would have difficulty verifying when an attempt to induce occurs. For example, is an oral discussion between a departing registered person and a former customer, where the registered person may simply be informing their former customer they are leaving their former broker, an 'attempt to induce'? There are other hypothetical scenarios where "attempt to induce" is not sufficiently clear, thereby leaving a question about when the timing of delivery of the educational communication should occur.

In addition, the Proposal provides for different standards of delivery depending on whether the customer has been communicated with orally, electronically or in writing. The requirements around oral disclosure are particularly challenging to comply with from a financial advisor and firm supervisory perspective. It would require immediate recognition by the recruiting firm/registered representative that a particular oral communication constitutes an "attempt to induce". Further, the registered representative would need to know that their communication was an "attempt to induce" and note this somehow so that the communication could be sent out. This also presents a challenge for member firms that would need to implement a supervisory process around the communication without a natural "trigger point."

WFA believes replacing "attempt to induce" with a straight-forward requirement that the educational communication be delivered to the former customer with the account transfer

[5] Proposed Rule 2272(b)(1)
[6] Proposed Rule 2272(b)(1)(A)
[7] Proposed Rule 2272(b)(1)(B)
[8] Proposed Rule 2272(b)(3)

paperwork, regardless of whether the inducement occurs in a written, electronic or oral manner. This would offer a more practical solution and alleviate unnecessary operational and supervisory uncertainty without negative impact to the customer.

B. FINRA Should Shorten the Delivery Obligation

As stated earlier, Proposed Rule 2272(b)(3) requires delivery of the educational communication for a period of six (6) months following the date the registered person begins employment or associates with a member. WFA believes that three (3) months would be a more reasonable length of time to require delivery of the educational communication.

III. CONCLUSION

WFA appreciates the opportunity to comment on FINRA's Proposal and commends FINRA's continuing efforts to further educate customer on important issues such as transferring assets to a new firm. Please feel free to contact me with any questions or comments.

Sincerely,

Robert J. McCarthy
Director of Regulatory Policy

1. **Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt FINRA Rule 2243, which would establish disclosure and reporting obligations related to member recruitment practices.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

At its meeting on September 19, 2013, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of 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.

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

(a) Purpose

Background

Members dedicate substantial resources each year to recruit registered persons ("representatives") to their firms. Implicit in these recruitment efforts is an expectation

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

that many of the representative's former customers will transfer assets to the member recruiting the representative ("recruiting firm") based on the relationship that the representative has developed with those customers. To induce representatives to leave their current firm, recruiting firms often offer inducements to the representatives in the form of recruitment compensation packages. Recruitment compensation packages provide a significant layer of compensation in addition to the commission payout grid or other compensation that a representative receives based on production at a new firm. Recruitment compensation typically takes the form of some combination of upfront payments, such as cash bonuses or forgivable loans, and potential future payments, such as performance-based bonuses or special commission schedules that are not provided to similarly situated representatives.

FINRA understands that representatives who contact former customers to join them at their new firm often emphasize the benefits the former customers would experience by transferring their assets to the firm, such as superior products, platforms and service. However, while the recruiting firm and the representative understand the financial incentives at stake in a transfer, the representative's former customers who are contacted or notified about moving assets to the recruiting firm generally are not informed that their representative is receiving a recruitment compensation package to transfer firms, or the potential magnitude of such packages. Furthermore, the former customers often may not be aware of the potential financial impacts to their assets that may result if they decide to transfer assets to a new firm, including, among other things, costs incurred to close an account with their current firm, transfer assets or open an account at the recruiting firm, and tax consequences if some assets are not portable and must be liquidated before transfer.

The proposed rule change aims to provide former customers of a representative with a more complete picture of the factors involved in a decision to transfer assets to a recruiting firm. FINRA believes that former customers would benefit from information regarding recruitment compensation packages and such other considerations as costs, fees and portability issues that may impact their assets before they make a decision to transfer assets to a recruiting firm. A representative's most recent 12-month gross production and revenue, often referred to as his or her "trailing 12," is typically the prominent factor in how firms calculate recruitment compensation packages. Other factors may include the firm from which the representative is transferring, the representative's book of business, the percentage of a representative's book of business that he or she expects will transfer to the new firm, the representative's years of service, debts to his or her previous firm, and the business model of the firm offering the package. FINRA understands that for representatives transferring to a large wirehouse firm, a standard recruitment compensation package may include an upfront payment, usually in the form of a forgivable loan, with a seven to 10 year term that equals from 150 to 200 percent of the representative's trailing 12. These packages also typically include potential future payments that the representative earns if specified production targets are met at the recruiting firm.

FINRA understands that smaller firms generally do not offer significant recruitment compensation packages to representatives. For representatives that move to a firm with an independent broker-dealer model, recruitment compensation also may not include significant upfront payments. Firms that operate under an independent model typically offer compensation packages that include transition assistance and higher commission payout grid compensation in lieu of upfront payments. Transition assistance packages are intended to offset costs incurred by a representative to transfer firms, such as moving expenses, leasing space, buying office supplies and furniture, and hiring staff. These arrangements also are often based on the representative's trailing 12 and can result in significant recruitment compensation packages depending on the recruited representative's production and client base.

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. However, FINRA believes that former customers currently are not receiving important information from recruiting firms and representatives when they are induced to move assets to the recruiting firm. There are a number of factors a former customer should consider when making a decision to transfer assets to a new firm. These factors include, among other things, a representative's motives to move firms, whether those motives align with the interests and objectives of the former customer, and any costs, fees, or product portability issues that will arise as a result of an asset transfer to the recruiting firm. The proposed rule change is intended to provide former customers information pertinent to these considerations, so they have a more complete picture of the factors relevant to a decision to transfer assets to a new firm and can engage in further conversations with the recruiting firm or their representative in areas of personal concern. FINRA believes that former customers would benefit from knowing, among other things, the magnitude of the financial incentives that may have led their representative to change firms, how the former customer's assets, or trading activity, factored into the calculation of such incentives, and whether moving their assets to the recruiting firm will impact their holdings or impose new costs. The proposed rule change is intended to focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

In addition, the proposed rule change would require 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 can assess the impact of these arrangements on a member's and representative's obligations to customers and detect potential sales practices abuses. FINRA believes that incorporating such data into its risk-based examination program will help to identify and mitigate potential harm to customers associated with member recruitment practices.

Disclosure and Reporting Obligations Related to Recruitment Practices

The proposed rule change would provide targeted and meaningful information to customers at what FINRA believes to be a relatively low cost to firms and without implying any bad faith on the part of representatives who receive recruitment compensation to move firms. The proposed rule change includes a disclosure obligation to "former customers"[2] who the recruiting firm attempts to induce to follow a transferring representative and a reporting obligation to FINRA. First, it would require disclosure to former customers of a representative of the financial incentives the representative will

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[2] See definition of "former customer" discussed infra at page 9.

receive in conjunction with the transfer to the recruiting firm and the basis for those incentives. Second, the proposed rule change would require disclosure to former customers of any costs, fees or product portability issues, including taxes if some assets must be liquidated prior to transfer, that will result if the former customer decides to transfer assets to the recruiting firm. The proposed disclosures are intended to encourage customers to make further inquiry to reach an informed decision by providing a framework with some specific information to consider the impact to their accounts. Finally, the proposed rule change would require a recruiting firm to report to FINRA, at the beginning of a representative's employment or association with the firm, 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. The details of proposed FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) are set forth in detail below.

Disclosure Requirement

The proposed rule change would require a member that hires or associates with a representative and directly or through that representative attempts to induce a former customer of that representative to transfer assets to an account assigned, or to be assigned, to the representative at the member to disclose to the former customer if the representative has received or will receive $100,000 or more of either (1) aggregate "upfront payments" or (2) aggregate "potential future payments" in connection with transferring to the member.[3] The proposed rule change would require members to

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[3] See proposed FINRA Rule 2243(a)(1). See also FINRA Rule 0140(a), which states that persons associated with a member shall have the same duties and obligations as a member under FINRA rules.

disclose recruitment compensation by separately indicating aggregate upfront payments and aggregate potential future payments in the following ranges: $100,000 to $500,000; $500,001 to $1,000,000; $100,000,001 to $2,000,000; $2,000,001 to $5,000,000; and above $5,000,000.[4] Thus, the proposed rule change effectively establishes two separate de minimis exceptions for payments of less than $100,000: one applied to aggregate upfront payments and one applied to aggregate potential future payments. Members also would be required to disclose the basis for determining any upfront payments and potential future payments (e.g., asset-based or production-based) the representative has received or will receive in connection with transferring to the member.[5]

The proposed rule change would define a "former customer" as any customer that had a securities account assigned to a representative 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.[6] For the purpose of the proposed rule, "upfront payments" would mean payments that are either received by the representative upon commencement of employment or association or specified amounts guaranteed to be paid to the

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4 See proposed FINRA Rule 2243.01 (Disclosure of Ranges of Compensation).

5 See proposed FINRA Rule 2243(a)(2).

6 See proposed FINRA Rule 2243.05(a). FINRA Rule 4512(c) defines 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.

representative at a future date, including, e.g., payments in the form of cash, deferred cash bonuses, forgivable loans, loan-bonus arrangements, transition assistance, or in the form of equity awards (e.g., restricted stock, restricted stock units, stock options, etc.) or other ownership interest.[7] The term "potential future payments" would include, e.g., payments (including the forms of payments described in the definition of the term "upfront payments") offered as a financial incentive to recruit the representative to a member that are contingent upon satisfying performance-based criteria, or a special commission schedule for representatives paid on a commissioned basis beyond what is ordinarily provided to similarly situated representatives, or are an allowance for additional travel and expense reimbursement beyond what is ordinarily provided to similarly situated representatives.[8] FINRA understands that members sometimes partner with another financial services entity, such as an investment adviser or insurance company, to recruit a representative. In those circumstances, both upfront payments and potential future payments would include payments by the third party as part of the recruitment arrangement.

In addition to the recruitment compensation disclosure, the proposed rule change would require the member to disclose to a former customer of the representative if transferring the former customer's assets to the member: (1) will result in costs to the

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7 See proposed FINRA Rule 2243.05(b).

8 See proposed FINRA Rule 2243.05(c). FINRA notes that neither category of recruitment compensation would include higher commission schedule payouts received by a transferring representative, such as may occur where a representative transfers to an independent broker-dealer, unless such payouts are beyond what is provided to similarly situated representatives, and that amount, alone or in combination with other payments, meets the $100,000 threshold for one of the categories of recruitment compensation.

former customer, such as account termination or account transfer fees from the former customer's current firm or account opening or maintenance fees at the member, that will not be reimbursed to the former customer by the member;[9] and (2) if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets in their current form to the member or inactivity fees to leave those assets with the former customer's current firm.[10]

The proposed rule change would allow a member to rely on the reasonable representations of the representative, supplemented by the actual knowledge of the member, in determining whether the proposed disclosures must be made to a former customer.[11] In the event that a member, after considering the representations of the newly hired representative, cannot make a determination whether any of the former customer's assets are not transferable to the member, the member must advise former customers in the disclosure: (1) to ask their current firms whether any of their assets will not transfer to the member and what costs, if any, the customers will incur to liquidate and transfer such assets or keep them in an account with their current firm and (2) that nontransferable securities account assets will be identified to the former customer in writing prior to, or at the time of, validation of the account transfer instruction pursuant to FINRA Rule 11870 (Customer Account Transfer Contracts).[12]

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9 See proposed FINRA Rule 2243(a)(3).

10 See proposed FINRA Rule 2243(a)(4).

11 See proposed FINRA Rule 2243.03 (Representations of a Registered Person).

12 See supra note 11.

FINRA believes that the proposed rule change would provide key information to investors that they seldom receive today – that compensation may have been a motivating factor for a representative's transfer of firms, that the basis of any recruitment compensation may have or could impact the representative's treatment of the customer or the recommendation to move assets to the recruiting firm, that there may be costs associated with transferring assets, and that there may be direct and indirect costs associated with liquidating or leaving behind nontransferable assets – relevant to a decision to follow the representative to the recruiting firm.

FINRA believes starting the disclosure of ranges of compensation at $100,000 for each category of recruitment compensation creates a reasonable de minimis exception from the proposed disclosure requirement at a level where the recruitment compensation or transition assistance are lesser motivating factors for a representative to move. FINRA will consider with interest comments on the appropriateness of the proposed de minimis exception amount of $100,000 for aggregate upfront payments and aggregate potential future payments; whether the disclosure of ranges of recruitment compensation should begin at a different amount; and whether the threshold should apply separately to upfront payments and potential future payments.

More generally, FINRA believes disclosure of ranges of compensation received strikes a balance that will provide former customers detailed information about the nature and magnitude of the financial incentives involved in their representative's move to factor into their decision whether to transfer assets to the new firm, while reducing privacy concerns about specific disclosure of a representative's compensation. FINRA believes the specified level of detail regarding the representative's recruitment compensation and the treatment of former customer's assets is necessary to make the disclosures valuable to former customers. The disclosures are intended to prompt a dialogue between the former customer and the representative or recruiting firm by providing a framework to consider the impact of a decision to transfer assets to a new firm. FINRA believes that the proposed disclosures would encourage customers to make further inquiries to the representative and the recruiting firm to reach an informed decision about whether to transfer assets. In addition, FINRA believes that requiring the basis for recruitment compensation to be disclosed would allow a former customer to review his or her account activity during the relevant time to see if any unusual activity occurred to boost the representative's revenue base in anticipation of a move and to more closely monitor activity at the new firm, should the customer decide to move assets there.

Delivery of Disclosures

The proposed rule change would require a member to deliver the proposed disclosures at the time of first individualized contact with a former customer by the representative or the member that attempts to induce the former customer to transfer assets to the member.[13] If such contact is in writing, the written disclosures must accompany the written communication; if such contact is oral, the member must give the disclosures orally at the time of contact followed by written disclosures sent within 10 business days from such oral contact or with the account transfer approval documentation, whichever is earlier. If the representative or the member attempts to induce a former customer 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

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13 See proposed FINRA Rule 2243(b)(1).

by the representative or member occurs before the former customer seeks to transfer assets, the disclosures must be delivered to the former customer with the account transfer approval documentation.[14] The disclosure requirement would apply for a period of one year following the date the representative begins employment or associates with the member.[15]

FINRA believes that any action taken by a recruiting firm directly or through a representative that attempts to induce former customers of the representative to transfer assets to the recruiting firm should trigger the disclosures. As such, under the proposed rule change, actions by the recruiting firm or the representative that do not involve individualized contact, such as a tombstone advertisement, a general announcement, or a billboard, would be considered attempts to induce former customers to move their assets. In these circumstances, if a former customer subsequently decides to transfer assets to the recruiting firm without individualized contact, the proposed rule change would require the recruiting firm to provide the proposed disclosures to former customers with the account transfer approval documentation.

Format of Disclosures

The proposed rule change would require a member to deliver the proposed disclosures in paper or electronic form in a format prescribed by FINRA, or an alternative format with substantially similar content.[16] The proposed rule change would require that

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14 See proposed FINRA Rule 2243(b)(2).

15 See proposed FINRA Rule 2243(b)(3).

16 See proposed FINRA Rule 2243.02 (Format of Disclosures).

written disclosures must be clear and prominent.[17] To facilitate uniform disclosure under the proposed rule change and to assist members in making the proposed disclosures to former customers of a representative, FINRA has developed a disclosure template form that members may use to make the required disclosures.[18] Members may, however, create their own disclosure form, as long as it contains substantially similar content to the FINRA-developed template.

On the disclosure form, a member would be required to indicate the applicable range of compensation in each category of recruitment compensation (i.e., aggregate upfront payments and aggregate potential future payments), for compensation in amounts of $100,000 or more that the representative has received or will receive in connection with transferring to the member. Thus, a representative who receives $75,000 in aggregate upfront payments and $75,000 in potential future payments would not trigger the compensation disclosure under the proposed rule because the $100,000 threshold applies separately to each category of recruitment compensation. Members also would be required to indicate the basis for those payments, e.g., assets brought in or future production. In addition, members would be required to indicate if transferring assets to the representative's new firm will result in costs to the former customer that will not be reimbursed by the member, if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets in their current form to the member or inactivity fees to leave those assets with the former customer's current firm.

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17 See supra note 16.

18 See Exhibit 3.

The FINRA-developed disclosure template would include a free text section in which the member or representative may include additional, contextual information regarding the disclosures, as long as such information is not false or misleading. A member could provide the same context in a disclosure form of its own design, as long as it does not obscure or overwhelm the required disclosures and is not false or misleading. FINRA believes that allowing members and representatives an opportunity to provide context regarding the disclosures will alleviate concerns that the disclosures will be confusing or imply bad faith on the part of the representative. FINRA believes that providing a uniform disclosure form will allow members to make the required disclosures at a relatively low cost and without significant administrative burdens.

Reporting Requirement

The proposed rule change would require a member to report to FINRA at the beginning of the employment or association of a representative that has former customers (as defined by proposed Rule 2243.05) if the member reasonably expects the total compensation paid to the representative by the member during the representative's first year of employment or association with the member to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000.[19] In determining total compensation, the member must include any aggregate upfront payments, aggregate potential future payments, increased payout percentages or other compensation the member reasonably expects to pay the representative during the first year of employment or association with the member. A member's report to FINRA must include the amount and form of such total compensation and other related information, in

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19 See proposed FINRA Rule 2243(c) (Reporting Requirement).

the time and manner that FINRA may prescribe.

The compensation information reported to FINRA pursuant to the proposed rule would not be made available to the public. FINRA intends to use the reported compensation information as a data point in its risk-based examination program. As such, FINRA believes it is important to capture the compensation information in a structured way. FINRA believes this data will help FINRA examiners better assess the adequacy of firm systems to monitor conflicts of interest and systems to detect and prevent underlying business conduct abuses potentially attributable to recruitment compensation incentives, and target exams where concerns appear. This data also will help FINRA to identify whether the conflicts of interest attendant to particular levels or structures of increased compensation when a representative transfers firms result in customer harm that is not adequately addressed by current FINRA rules.[20] Further, FINRA believes such data would inform any future rulemaking to require firms to manage conflicts arising from specific compensation arrangements. In addition, FINRA believes the proposed reporting requirement itself could mitigate potential sales practice violations, as it might encourage firms to give greater supervisory attention to the more

20 Recruitment compensation packages offered to representatives have been the subject of regulatory concern for many years. Former SEC Chairman Schapiro identified potential conflicts raised by recruitment practices in 2009 in an open letter to broker-dealer CEOs. The letter noted that: "[s]ome types of enhanced compensation practices may lead registered representatives to believe that they must sell securities at a sufficiently high level to justify special arrangements that they have been given. Those pressures may in turn create incentives to engage in conduct that may violate obligations to investors. For example, if a registered representative is aware that he or she will receive enhanced compensation for hitting increased commission targets, the registered representative could be motivated to churn customer accounts, recommend unsuitable investment products or otherwise engage in activity that generates commission revenue but is not in investors' interest." See Open Letter to Broker-Dealer CEOs from SEC Chairman Mary L. Schapiro, dated August 31, 2009.

lucrative compensation packages that will be reported to FINRA.

Calculating Compensation

The proposed rule change would provide that in calculating compensation for the purpose of the proposed disclosure requirement and the proposed reporting requirement to FINRA, a member: (1) must assume that all performance-based conditions on the representative's compensation are met; (2) may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied; and (3) may net out any increased costs incurred directly by the representative in connection with transferring to the member.[21] Members must include as part of such calculations all compensation the representative has received or will receive that is based on gross commissions and assets under care from brokerage business and, if applicable, fee income and assets under management from investment advisory services. For example, a dual-hatted representative that receives from the recruiting firm an upfront payment of $1.5 million based on gross commissions from brokerage business and an upfront payment of $1 million based on fees and assets under management from investment adviser business would be required to indicate on the customer disclosure form that he or she has received recruitment compensation in the range of $2,000,001 to $5,000,000 in aggregated upfront payments, and include $2.5 million in upfront payments as part of calculating total compensation for the purposes of the reporting requirement to FINRA.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days

21 See proposed FINRA Rule 2243.04 (Calculating Compensation).

following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] 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 providing information on the costs and conflicts associated with a former customer's important decision whether to transfer assets to a representative's new firm. The proposed rule change would allow a former customer to make a more informed decision, taking into account the financial incentives that may motivate a representative to move firms and induce a customer to follow, as well as the costs to be borne by the customer in connection with transferring assets and the possibility that some assets cannot transfer. In addition, the proposed requirement to report to FINRA significant increases in total compensation in a representative's first year at a recruiting firm will enhance investor protection by allowing FINRA to monitor such practices and use the data collected to detect potential sales practice abuses.

4. 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. By relying on disclosure and reporting, the proposed rule seeks to focus a former

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22 15 U.S.C. 78o-3(b)(6).

customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

The proposed rule would require a recruiting firm to determine the dollar value of a representative's recruitment compensation, and if meeting a threshold, provide disclosure to former customers the recruiting firm or representative attempt to induce to transfer assets during the representative's first year of employment or association. In addition, the proposed rule would require the recruiting firm to report information about a representative's total compensation to FINRA if it meets the proposed threshold. Firms also would be responsible for developing compliance policies, training and tracking for the proposed rule. Some commenters have noted that the proposed rule also may have an impact on the market for representatives.

FINRA does not believe that the proposed rule change will impose undue operational costs on members to comply with the disclosure and reporting obligations because the information needed to make the calculations resides with either the recruiting firm or the representative. The recruiting firm knows how much upfront compensation they will be paying the representative, as well as the additional potential future income the representative may earn if he or she satisfies conditions. Furthermore, the proposed rule change permits the recruiting firm to make reasonable assumptions about the gross revenue to which any increased payout percentage may apply. In addition, FINRA understands that the recruiting firm or the representative typically has ongoing contact with former customers, thereby facilitating the opportunity for the disclosures to be made. With respect to the disclosure of costs, FINRA believes that the representative will know of costs a former customer will incur at the current firm to transfer assets or leave them inactive and that the recruiting firm knows the costs it imposes to transfer assets and open and maintain an account there. Also, the proposed rule change allows the recruiting firm to rely on the reasonable representations of the representative for much of the information, and with respect to portability, give more generalized disclosure where the information cannot be ascertained from the representative or other actual knowledge.

In developing the proposed rule change, FINRA considered several alternatives to the proposed rule change, which are set forth below, 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. The proposed rule change addresses many of the concerns noted by commenters in response to an earlier version of the proposal.[23]

First, the earlier version of the proposed rule change 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[24] to any former customer of the

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23 See Item 5, which contains a detailed discussion of the earlier version of the proposal that was published in Regulatory Notice 13-02 (January 2013).

24 In the initial 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

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 earlier proposal did not include any disclosure of costs or portability ramifications associated with transferring assets to the new firm. As discussed in detail in Item 5, a majority of the comments received on the earlier version of the proposal opposed specific disclosure of enhanced compensation, stating that it was burdensome, an invasion of privacy and failed to address a particular harm to customers. Some commenters instead favored general disclosure that a representative is receiving unspecified compensation as part of a transfer.

FINRA considered, as an alternative to the proposed rule change, a proposal that would have included a general recruitment compensation disclosure (i.e., no specific dollar amounts) and general disclosure that the former customer may incur costs or encounter portability issues in connection with any asset transfer. However, FINRA believes that the proposed rule change is preferable to alternatives with general disclosure requirements because the general disclosure approach does not give former customers any sense of the scope or magnitude of a representative's recruitment compensation package or whether the cost and portability disclosures will actually impact their personal holdings. FINRA developed the revised approach in the proposed rule change to strike a balance between specific disclosure and general disclosure by requiring disclosure of ranges of compensation of $100,000 or more as applied separately to aggregate upfront

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connection with the transfer of securities employment (or association) to the recruiting firm.

payments and aggregate potential future payments and affirmative cost and portability statements.

The proposed disclosure of ranges of recruitment compensation provides customers with meaningful information, i.e., that compensation may have been a motivating factor in their representative's decision to change firms, to consider in conjunction with a representative's other stated reasons for changing firms, without requiring members to disclose specific information about the payments that may compromise the privacy of the representative. As noted in Item 3, representatives often emphasize the superior products, platforms and services of the recruiting firm without disclosing the lucrative financial incentives they have received or will receive in connection with the transfer. In addition, to assist members with compliance with the proposed rule change and to mitigate costs and administrative burdens, FINRA developed a disclosure form that members may use to make the required disclosures. The proposed rule change adds flexibility by allowing recruiting firms to deliver the disclosures in an alternative format with substantially similar content so firms can leverage existing compliance efforts or procedures.

Second, as noted above, the proposed rule change exempts compensation that does not meet a $100,000 threshold as applied separately to aggregate upfront payments and aggregate potential future payments for purposes of disclosure to former customers and compensation that does not meet a threshold of the greater of 25% or $100,000 over the representative's prior year's compensation for purposes of reporting total compensation to FINRA, and allows members to net out direct costs paid by the representative in a transfer to a new firm when making such calculations. The initial proposal included a $50,000 exception, which many commenters opposed because, among other things, they felt it was arbitrary, too low to cover expenses incurred by representatives to transfer firms and did not allow firms to net out direct costs incurred by the representative in calculating recruitment compensation. Based on the comments and discussions with firms, FINRA believes that raising the proposed de minimis exception for recruitment compensation to $100,000 for each of aggregate upfront payments and aggregate potential future payments will substantially mitigate costs for firms without compromising investor protection. Based on input from firms that offer recruitment compensation, FINRA believes the proposed de minimis exception will except from the disclosure obligation those firms whose payments are only intended as transition assistance to help cover relocation and overhead costs, such as new business cards and letterhead, and that amounts below this threshold significantly diminish the motivating impact for the representative to move firms and therefore would not be as meaningful to customers. FINRA also understands that recruitment compensation that exceeds the $100,000 threshold for aggregate upfront payments and aggregate potential future payments is typically offered only by the largest firms and therefore the disclosure obligation should not impact most small firms or independent broker-dealers, where the relative costs of compliance would be more burdensome.

FINRA understands the proposed de minimis exception for disclosure of compensation under $100,000 in each category of recruitment compensation may impose some burden on small member firms to establish administrative processes to track compensation and to ensure that records are available to evidence compliance. FINRA does not believe that the administrative costs to track recruitment compensation outweighs the investor protection benefits of increased transparency to inform former customers about recruitment compensation that may have motivated their representative to move firms before they decide to transfer account assets to their representative's new firm. In addition, FINRA notes that the proposed rule change incorporates a provision that permits members to net out costs directly incurred by a representative in connection with a transfer to the recruiting firm. Members would measure compensation amounts for purposes of determining the $100,000 threshold in each category of recruitment compensation after direct costs to the representative in connection with the transfer have been netted out. Therefore, FINRA believes it is more likely that the de minimis exception will apply when a representative moves from a wirehouse firm to a firm with an independent broker-dealer model or when a representative otherwise incurs direct costs associated with a transition.

Third, the proposed rule change limits the proposed disclosures to situations where a member, directly or through a representative, attempts to induce that representative's former customers to transfer assets to the member. Recruiting firms would not have to make the disclosures to former customers if the recruiting firm or representative does not undertake any efforts to induce former customers to transfer assets to the member, either through individualized contact, such as an email or phone call, or non-individualized contact, such as a tombstone advertisement, a billboard or a notification on the firm's website.

Fourth, FINRA notes that the proposed rule change includes a one-year disclosure period so that members do not have to track for or provide disclosures to customers after the representative has been with the firm for a year. FINRA considered an alternative that would have required disclosure for as long as the representative continued to receive recruitment compensation, which in some cases, could be 10 years. FINRA understands that most former customers who transfer assets to the representative's new firm do so soon after the representative changes firms so the one-year period should provide a reasonable end date for the proposed disclosure requirement.

Fifth, FINRA considered whether the proposed rule should apply to any new customers of the representative at the new firm, or whether disclosure to just former customers would accomplish the goals of the proposed rule change. FINRA determined that it would limit the proposed rule to former customers of the representative because the recruitment compensation the representative has received or will receive in a transfer is likely based on activity in the accounts of such former customers and the expectation that they will transfer assets to follow the representative to the recruiting firm. In addition, representatives should have a sense of how moving assets to the recruiting firm will impact former customers' accounts because they are aware of the costs associated with account termination, transfer and opening and product limitations at their previous firm and at the recruiting firm. Representatives are less likely to have similar information for new customers opening an account with the recruiting firm. A customer opening a new account also does not have an established relationship with the representative and, in many cases, has already determined to place assets with a new firm without any inducement from the representative.

Sixth, FINRA considered whether the proposed rule should require disclosure to current customers when their representative receives a retention bonus. As explained in more detail in Item 5, the proposed rule change does not include that requirement because the proposal is more narrowly focused on providing a former customer important information when deciding whether to follow his or her representative to a new firm, and incentives offered to a representative while at a firm do not implicate the same considerations for customers, such as transfer costs and portability issues. FINRA notes that to the extent a retention bonus is part of a recruitment compensation package, disclosure would be required as a potential future payment if the magnitude of the bonus exceeds the $100,000 threshold. FINRA further notes that the reporting requirement in the proposed rule change is intended, in part, to provide insight as to whether compensation packages are resulting in increased risk to customers of inappropriate sales practice activities. That information will help inform whether additional regulation around retention bonuses or other compensation incentives is necessary.

Finally, in considering the proposed requirement that members report to FINRA significant increases in a recruited representative's total compensation over the prior year, FINRA notes that it consulted with its advisory committees to determine the proposed threshold of the greater of $100,000 or 25%, which is intended to exclude compensation arrangements that do not pose the same level of potential conflicts of interest. FINRA believes compensation increases of amounts below the threshold are less valuable for its examination program, particularly when compared to the burden of compliance on smaller firms that are more likely to offer recruitment packages in those ranges. FINRA will consider with interest comment on whether the proposed threshold is appropriate and, if commenters favor an alternative, the reasons why such alternative is preferable.

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

FINRA published an earlier version of the proposal for comment in Regulatory Notice 13-02 (January 2013) (the "Notice Proposal"). A copy of the Notice Proposal is attached as Exhibit 2a. The comment period expired on March 5, 2013. FINRA received 567 comment letters in response to the proposal, of which 65 were unique letters. A list of the comment letters received in response to the Notice Proposal is attached as Exhibit 2b.[25] Copies of the comment letters received in response to that proposal are attached as Exhibit 2c. Of the 65 unique comment letters received, 21 were generally in favor of the proposed rule change, 43 were generally opposed, and one letter did not address the merits of the proposal.

The Notice Proposal 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 of such enhanced compensation to any former customer of the representative at the previous firm who: (1) is individually contacted by the member or representative, either orally or in writing, regarding the transfer of employment (or association) of the representative to the member; or (2) seeks to transfer an account from the previous firm to an account assigned to the representative with the member. The proposal defined enhanced compensation to include signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance, and similar arrangements. The proposal would have required disclosure for one year following the date the representative associates with

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[25] All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

the recruiting firm. The proposal included an exception for enhanced compensation of less than $50,000 and customers that meet the definition of an institutional account pursuant to FINRA Rule 4512(c), except any natural person or a natural person advised by a registered investment adviser.

Comments in support of the proposal were split between those that favored specific disclosure and those that advocated general disclosure of recruitment compensation. In general, comments opposed to the proposal asserted that it did not address an identifiable harm to customers, was pejorative toward representatives, invaded their privacy, and failed to include other cost impacts to customers when transferring their accounts. The comments and FINRA's responses are set forth in detail below.

Support for the Notice Proposal

In general, commenters that supported the proposal stated that disclosing specific recruitment compensation to customers would provide investors with information relevant to investment decisions, promote greater transparency, increase investor confidence and trust, and increase customer awareness of potential conflicts of interest relating to recruitment compensation packages.[26] One commenter noted that the proposal put the interest of customers first, supported a high standard of business ethics, and provided disclosure appropriate for customers to make informed decisions without prohibiting legitimate business practices.[27] Another commenter noted that informing customers of potential conflicts of interest regarding recruitment compensation is

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[26] APA, Arrigo, Capstone-FA, Cornell, Edward Jones, HDVest, JGHeller, Merrill, Miami, Morgan Wilshire, MSWM, NASAA, Oppenheimer, PIABA, Ruchin, Scott Smith, Summit-E, UBS, Wedbush, WFA.

[27] UBS.

especially important if the representative's compensation is determined by the assets a customer moves to the representative's new firm.[28] One commenter also noted that most representatives do not tell customers that they are receiving recruitment compensation for moving customer assets to the new firm and inflate production to benefit trailing 12 calculations.[29] Another commenter stated that registered investment advisers are required to disclose all conflicts of interest, including those that may arise when the adviser changes firms.[30] Two commenters noted that transparency is a key component of a customer's ability to make an informed decision about transferring his or her assets.[31]

Specific vs. General Enhanced Compensation Disclosure

Numerous commenters wrote in support of uniform, industry-wide disclosure of recruitment compensation to customers, including the form of the recruitment compensation arrangement and specific dollar amounts.[32] One commenter suggested that FINRA should work with the industry to create a model approach that clearly articulates appropriate disclosure for enhanced compensation arrangements and supported concise, direct and plain English disclosures of information that is sufficient to inform an investor of the potential material conflicts of interest that may arise in connection with recruiting related bonus payments.[33] Another commenter noted that specific disclosure would make

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28 Capstone-FA.

29 APA.

30 Cornell.

31 Morgan Wilshire, Wedbush.

32 Edward Jones, Merrill, MSWM, NASAA, Summit-E, UBS, WFA.

33 SIFMA.

it significantly easier for former customers to assess the merits of the change to reach an informed decision about whether to transfer an account to the new firm.[34]

The Notice Proposal requested comment on an alternative approach that would require a general upfront disclosure by the recruiting firm or representative that the representative is receiving, or will receive, material enhanced compensation in connection with the transfer of securities employment (or association) to the recruiting firm and that additional specific information regarding the details of such compensation would be available at a specified location on the firm's website or upon request.

A few commenters asserted that a general disclosure would dilute the goal of proactive, timely disclosure because customers would carry the burden to seek out the more detailed disclosures from the member or representative.[35] One commenter opposed the alternative approach because the more detailed web-based disclosure would be accessible not only by customers, but also the public.[36] Numerous commenters suggested that the proposal should require general disclosure of recruitment compensation, instead of specific disclosure, with an opportunity for customers to request more information from the representative or member regarding the details of such compensation.[37] Some commenters also stated that a general disclosure would prompt a dialogue between the

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[34] Oppenheimer.

[35] Edward Jones, Summit-E, UBS.

[36] Summit-E.

[37] Advisor Group, Ameriprise, BDA, Bischoff, Cetera, Janney, LaBastille, Lax, Lincoln, Miami, NAIFA, Plexus, Stifel, Summit-B, Sutherland, Wedbush.

representative and retail customers that would be more valuable than raw numbers without context.[38]

Numerous commenters stated that a brief, plain English, generic disclosure with the delivery of Automated Customer Account Transfer Service ("ACATS") forms or at account opening would be more meaningful to customers than specific disclosure of compensation, and also would avoid privacy and anti-competitive issues.[39] Several commenters noted that specific disclosure might mislead or confuse customers and would, therefore, not be helpful or serve the purposes of investor protection.[40] One commenter stated that customers might view recruitment compensation as a bribe or excessive.[41] One commenter suggested that firms should provide customers with a single page, plain English form to inform the client that their representative is receiving recruitment compensation exceeding $50,000 and, although the representative is under no suspicions of acting unethically, FINRA has identified enhanced compensation as an area prone to conflicts, and any concerns regarding the management of investment accounts and objectives should be raised with the representative.[42] Two commenters noted that disclosure of specific recruitment compensation may be viewed as a measure of the new firm's endorsement of the representative.[43]

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38 Ameriprise, Cetera, Wedbush.

39 Ameriprise, Cetera, Janney, Lax, Stifel, Sutherland, Wedbush.

40 Advisor Group, BDA, Bischoff, Burns, Miami, NAIFA, Plexus, Sutherland.

41 Smith Moore.

42 Cornell.

43 Burns, Elzweig.

As discussed in Item 4, FINRA does not agree that general disclosure of recruitment compensation would provide sufficient information for a former customer to weigh in a decision whether to transfer assets to his or her representative's new firm. FINRA continues to believe that some level of specificity regarding the magnitude of recruitment compensation paid by a member to a representative is necessary for the disclosure to be meaningful to former customers. FINRA believes that customers need some quantifiable measure to evaluate the impact recruitment compensation may have had on the representative's decision to move firms and his or her attempt to induce former customers to transfer assets to that new firm. FINRA further believes that the disclosure of ranges of compensation will provide a former customer enough sense of the magnitude of the payments to foster further inquiry with the representative if the customer finds the compensation relevant to his or her decision to transfer assets to the new firm.[44]

Opposition to the Notice Proposal

In general, commenters opposed to the proposal stated that it does not address an identifiable harm or conflict of interest, is unnecessary and redundant, and does not provide additional protections to retail investors beyond existing rules (e.g., FINRA's suitability rule already addresses churning and unsuitable recommendations and FINRA's supervision rules address firms' supervisory systems).[45] Three commenters noted that the

44 See also FINRA's responses to comments regarding privacy and anti-competitive concerns on pages 39 through 44.

45 Abel, Advisor Group, Ameriprise, APA, BDA, Bischoff, Burns, Capstone-AG, Cetera, Commonwealth, Cutter, Edde, Elzweig, FORM, FSI, Gompert, Janney, LaBastille, Lincoln, LPL, NPB, SIPA, Smith Moore, Spartan, Stifel, Sutherland, Summit-B, Summit-E, Taylor, Taylor English, Whitehall, Wilson, Wood.

benefits of the proposal are unclear because, among other things, a representative's compensation has no direct impact on a customer's account and recruitment compensation does not present a conflict of interest that is distinguishable from other compensation arrangements not covered by the proposal.[46]

Five commenters stated that the proposal is not helpful to customers and will not assist them in making a decision to transfer assets to a new firm.[47] Three commenters stated that the proposal is not well designed to mitigate conflicts or help customers because it does not prohibit any action; it merely provides an incomplete disclosure of one of many potential conflicts.[48] A few commenters stated that if the true intent of the proposal is to reduce conflicts of interest by curtailing recruitment compensation packages, then it would be more efficient for FINRA to address such arrangements, rather than requiring disclosure to customers with the hope that the second order impact will be for firms to change their practices.[49]

Numerous commenters questioned the purpose of the proposal given the lack of evidence that recruitment compensation harms clients in any way.[50] Several commenters noted that FINRA cited no enforcement actions, cases, customer complaints or other empirical evidence that enhanced compensation creates a conflict of interest between customers and representatives and requested that FINRA consider modifying the proposal

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46 Smith Moore, Sutherland, Taylor English.

47 Advisor Group, Bischoff, Commonwealth, Spartan, Wedbush.

48 Burns, Taylor English, Showalter.

49 Cutter, Taylor English, Whitehall.

50 Advisor Group, Burns, Cutter, Edde, Herskovits, Smith Moore, Summit-B, Sutherland, Taylor English, Wedbush and Whitehall.

to more accurately address any perceived harm.[51] One commenter stated that more rigorous analysis is needed to determine if an actual conflict exists.[52]

Several commenters were concerned that the proposal assumes that representatives act in bad faith and implies that customers should not trust representatives if they have received recruitment compensation, even if it merely helps offset the cost of moving firms.[53] One commenter noted that the backlash from customers will outweigh any benefits of the proposal.[54] Another commenter noted that the proposal doesn't explain how the significant consequences to the representative of specific compensation disclosure are outweighed by the benefit to retail customers and suggested focus group testing to determine whether a general disclosure would be as effective as specific disclosure.[55] One commenter stated that the proposal will cause jealousy and bad will among clients, create a more litigious environment, and will force representatives to take on larger and fewer clients.[56] Another commenter stated that the disclosure will put pressure on representatives to perform above prevailing market conditions to justify payouts.[57] One commenter stated that the proposal will further sensationalize the transition of a representative to another firm.[58] Another commenter stated that it, instead,

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[51] Burns, Commonwealth, Janney, Stifel, Sutherland.

[52] Janney.

[53] Abel, Ameriprise, Burns, Capstone-AG, Commonwealth, Cutter, FORM, FSI, Lincoln, LPL, Whitehall.

[54] Bischoff.

[55] FSI.

[56] Wilson.

[57] Taylor.

[58] Smith Moore.

could harm a representative's interests with no practical purpose.[59] However, one commenter stated that specific disclosure of recruitment compensation that is moderate and reasonable will not negatively affect representatives because he or she can explain the benefits of the move and the costs and lost revenues involved in the transition.[60]

Some commenters raised concerns that the proposed disclosure will be confusing to customers because they cannot understand the complexity of compensation packages and, therefore, the proposal will not be valuable to them or serve the purposes of investor protection.[61] One commenter noted that customers are not in a position to judge the merits of recruitment compensation to understand their value to the future of a firm or branch, and are more likely to view them all negatively.[62] Other commenters requested clarification of what is meant by disclosure of "details" of enhanced compensation and "similar arrangements."[63]

A number of commenters also noted that recruitment compensation may actually benefit investors because it may cover ACATS transfer fees, moving expenses, or new advertising materials, and allow the representative to move to a new firm with better service.[64] One commenter noted that the proposal does not consider that representatives who receive significant recruitment compensation packages are those that are in high

59 Lax.

60 Korth.

61 Advisor Group, BDA, Miami, Plexus, Sutherland.

62 Bischoff.

63 Sutherland, Lax, NAIFA, Cutter, Summit-E.

64 FORM, Lincoln, LPL, Capstone-AG.

demand and the firms that recruit them will have quality platforms and services that will benefit clients.[65]

FINRA believes the proposed rule change addresses many of the commenters' concerns by better focusing the proposal on the impact to customers when they are considering transferring assets to a representative's new firm, rather than specific amounts of recruitment compensation paid to a representative. As stated in Item 3, 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 also does not intend to cast representatives in a negative light for receiving recruitment compensation when they accept a new position.

The proposed rule change would require disclosure of ranges of compensation, instead of specific amounts of compensation, and expands the disclosures to include information about the costs, fees, and portability issues that will directly impact a customer's assets. The proposed rule change is intended to provide former customers with this information, so they have a more complete picture of the factors relevant to a decision to transfer assets to a new firm and can engage in further conversations with the recruiting firm or their representative in areas of personal concern. Moreover, the proposed rule change will focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

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65 Elzweig.

FINRA does not believe that former customers will be confused by a clear, plain English disclosure regarding a representative's recruitment compensation. However, FINRA notes that the proposed rule change amends the Notice Proposal to require disclosure of ranges of compensation, the basis for such compensation, and other important considerations that a former customer should consider when they are deciding whether to transfer assets to a new firm. The proposed rule change would require members to use the FINRA-developed disclosure template, or their own form with substantially similar content, and would include a free text section to include contextual information regarding the disclosures. In addition, members would be required to include descriptions regarding "upfront payments" and "potential future payments" to assist customers in understanding the types of payments that their representative has received or will receive from the recruiting firm.

As noted in Item 3, FINRA believes the proposed rule change provides targeted and meaningful information to customers at a relatively limited cost to firms and without implying any bad faith on the part of the registered representative. The disclosures are intended to encourage customers to make further inquiry to reach an informed decision by providing a framework with some specific information to consider the impact to their accounts. In addition, FINRA believes that former customers should be given enough information to understand how their assets factor into the calculation of their representative's recruitment compensation package, and how much money is at stake in these transfers.

Privacy Concerns

Numerous commenters opposed specific disclosure of recruitment compensation because it would interfere with a representative's right to privacy.[66] Some commenters stated that the proposal threatens the financial privacy of representatives in a manner that is unfair, needlessly intrusive, and may jeopardize client relationships.[67] Others noted that it will expose personal and confidential information without any tangible benefit to the customer and should not be required absent a compelling public policy reason to do so.[68] One commenter minimized the operational and privacy concerns stating that they do not outweigh clients' best interests, and disclosures may enhance client relationships based on transparency and trust.[69]

A number of commenters stated that the proposal exposes representatives to safety risks, including, e.g., identity theft, data security incidents,[70] financial fraud, kidnapping, black mail and extortion.[71] One commenter expressed concerns that disclosure of recruitment compensation will make a representative's compensation a factor when customers are considering the settlement of outstanding complaints and negotiating settlement offers.[72] Two commenters further stated that firms will be unable

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66 Ameriprise, Burns, Cetera, Gompert, Janney, Lax, Stifel, Sutherland, Wedbush, Whitehall, Wilson.

67 FSI, Herskovits, LaBastille, Lax, Stifel.

68 Ameriprise, BDA, Stifel.

69 MSWM.

70 Cetera, Janney.

71 FSI, Janney, SIPA.

72 SIPA.

to protect widespread dissemination of a representative's compensation information once it is disclosed.[73] One commenter suggested including with the proposed disclosure a customer confidentiality provision with an exception for the customer to share the information with an attorney or financial professional for consulting purposes.[74] One commenter noted that the information gained by the disclosure will eventually be obtained and aggressively used by the previous firm to try to persuade clients not to follow their representatives to the new firm.[75] Two commenters warned that the proposed disclosure would expose trade secrets and destroy proprietary business formulas that have been developed by firms.[76] Another commenter stated that it threatens the confidential nature and success of firms' recruiting programs and impacts a core and currently proprietary tool that broker-dealers use to manage their business (i.e., compensation of personnel) without a measurable increase in customer protection or evidence that the disclosure will impact the perceived conflicts.[77] Three commenters stated that the proposal could violate applicable state and federal privacy regulations, including the Gramm-Leach-Bliley Act and Regulation S-P, which are designed to protect the dissemination of non-public customer personal information.[78] One

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73 Ameriprise, Janney.

74 Miami.

75 Burns.

76 Janney, Miami.

77 Sutherland.

78 FSI, Janney, Taylor English.

commenter encouraged FINRA to consider the operational challenges presented by the proposal, such as non-compete agreements and the prohibitions in Regulation S-P.[79]

FINRA believes that many of the privacy concerns noted by commenters are reduced by the proposed rule change that would provide for simplified and less specific disclosure of recruitment compensation in ranges. FINRA believes that the proposed disclosure of ranges of compensation and affirmative cost and portability disclosures, collectively, strike an appropriate balance to alleviate privacy and anti-competitive concerns, while providing customers with important information upon which to base a decision to transfer assets to a new firm. FINRA does not agree with the commenters that stated that there is no benefit or significant policy reason to provide recruitment compensation disclosure to former customers of a transferring representative. FINRA believes that receiving lucrative financial incentives that are often based on the amount of assets that will transfer with a representative to a new firm or the representative's trailing 12 creates a conflict of interest when a member, directly or through that representative, attempts to induce the owners of such assets to transfer them to the new firm. The representative's interest in receiving recruitment compensation may not align with the customer's best interest as to where to maintain his or her assets. FINRA believes that the investor protection benefits of providing this important information to former customers to inform their decision whether to transfer assets to their representative's new firm outweigh any remaining privacy issues that may arise under the proposed rule change.

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79 Sutherland.

In addition, FINRA does not agree that the proposal to require disclosure of ranges of recruitment compensation to former customers 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 should not 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.[80] 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 for Broker Recruiting.[81]

Anti-Competitive Consequences of the Notice Proposal

The Notice Proposal solicited comment on whether the proposal will affect business practices and competition among firms with respect to recruiting and compensation practices. Many commenters stated that a general disclosure is preferable to specific disclosure of recruitment compensation because specific disclosure may have anti-competitive consequences.[82] Two of these commenters noted that the proposal is an

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80 See 17 CFR 248.15(a)(7)(i).

81 The Protocol for Broker Recruiting (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.

82 Ameriprise, Cetera, Janney, Lax, Stifel, Sutherland, Wedbush.

indirect restraint on trade and suppresses fair competition inconsistent with the requirements of a registered securities association under the Exchange Act.[83] Numerous commenters stated that the proposal may constructively operate as a restrictive covenant not to compete if representatives are essentially restrained from transitioning to a new firm because of disclosures that are applicable only to their industry, which may result in a representative remaining with a less competitive or unethical firm.[84] Two commenters noted that the proposal will dampen innovation and harm customers.[85] One commenter cautioned that the proposal could cripple the opportunities for representatives to merge and consolidate their practices and to be compensated for their expenses.[86] Another commenter disagreed and stated that competition for talented representatives will not be affected by the proposal.[87]

Three commenters noted that the proposal deepens the regulatory gap between broker-dealers and registered investment advisers and posited that it could have the result of driving representatives into the registered investment adviser business.[88] One commenter suggested that FINRA work with the Commission and the states to adopt similar disclosure requirements for registered investment advisers so that representatives

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83 Cetera, Janney.

84 Burns, Burke, Elzweig, Janney, Smith Moore, Steiner, Stifel, Taylor, Wilson.

85 Burns, Elzweig.

86 Capstone-AG.

87 UBS.

88 Ameriprise, FSI, Janney.

who switch to an adviser firm will also be subject to the proposed disclosure requirements.[89]

FINRA believes that representatives should have the freedom to transfer firms for any business reason. The proposed rule change is not designed to obstruct representatives from moving to a situation that better suits their needs and the needs of their customers. FINRA does not believe that the proposed rule change will prevent representatives from transferring firms by simply requiring the disclosure of key information that a former customer should consider before making a decision to move his or her assets to a new firm. Further, the proposed disclosure of recruitment compensation ranges is less intrusive than the more specific requirements of the Notice Proposal and should cure many of the concerns that the proposed rule change would be anti-competitive. Based on consultation with FINRA's advisory committees and discussions with member firms, FINRA does not anticipate that industry-wide uniform disclosure of recruitment compensation of $100,000 or more for each category of recruitment compensation will have the effect of stalling representatives' movement between firms. With respect to commenters' concerns regarding the disparate treatment of registered investment advisers under the proposed rule, FINRA notes that registered investment advisers are subject to the oversight of the SEC pursuant to the Investment Advisers Act of 1940 and a disclosure regime established by the Form ADV (Uniform Application for Investment Adviser Registration).[90]

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89 WFA.

90 See Form ADV, Section 2B, Item 5 (Additional Compensation): "If someone who is not a client provides an economic benefit to the supervised person for providing advisory services, generally describe the arrangement. For purposes of this Item, economic benefits include sales awards and other prizes, but do not

<u>Disclosure is Misleading to Customers Without Context</u>

Two commenters questioned the value of the proposed disclosure without any context to explain the justification and basis for the recruitment compensation arrangement.[91] Two other commenters stated that customers may think that the amount is a measure of the new firm's endorsement of the representative.[92] Commenters also noted that customers will not be able to fully understand a recruitment package without having a full picture of all the factors involved, including, among other things, the risks and costs of a transition,[93] personal reasons for a move,[94] lost revenues suffered during the transition and first months at a new firm, and without relative frames of reference regarding the representative's compensation, such as the size of the representative's book of business or average annual revenues.[95] Other commenters stated that customers are not experienced enough to know the right questions to ask or the proper due diligence to perform without context, including, among other things, that the arrangement may involve minimum customer asset transfer amounts or minimum revenue amounts attached to asset transfers for payments to fully vest.[96] One commenter asked whether the disclosure may be accompanied by a statement explaining the other factors

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include the supervised person's regular salary. Any bonus that is based, at least in part, on the number or amount of sales, client referrals, or new accounts should be considered an economic benefit, but other regular bonuses should not."

91 MarketCounsel, Taylor English.

92 Burns, Elzweig.

93 Cutter, Smith Moore.

94 Noble.

95 Bischoff, Burns, Wedbush.

96 Capstone-FA, Plexus.

considered when making the move to the new firm, such as the availability of research and market analysis.[97] Three commenters noted that there are many reasons why a representative will move firms so the financial incentives received should not call into question the motivation behind such a move or serve as an indication that the move was for any other reason than in the best interest of clients.[98]

FINRA believes it appropriate to allow a member to provide context to inform a former customer's decision-making process and enhance his or her understanding of recruitment compensation arrangements, and other considerations such as costs, fees and portability issues that may impact the customer. Therefore, FINRA plans to include on the FINRA-developed disclosure template a free text section in which a member or representative may choose to include contextual information to explain the reasoning and basis for the recruitment compensation package and information regarding costs, fees and portability issues that may impact the former customer. FINRA believes that any information that may clarify the disclosures is appropriate so long as it is not misleading.

<u>Notice Proposal is Too Broad</u>

Four commenters suggested that the proposal should exclude transition assistance designed solely to help offset the costs incurred by representatives to switch firms.[99] One commenter requested that transition assistance associated with loss of insurance renewals due to vesting restrictions be excluded from the proposed disclosure requirement.[100] Two commenters questioned the need for a disclosure requirement for asset-based recruitment

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97 LaBastille.

98 Janney, NAIFA, Summit-B.

99 Commonwealth, NAIFA, Summit-B, Summit-E.

100 Summit-E.

compensation.[101] One commenter recommended that FINRA incorporate an exception in the proposed rule for firms that do not include commission targets as part of enhanced compensation arrangements.[102] Some commenters also noted that the proposal should be narrowed to include only compensation that presents a material conflict of interest[103] or FINRA should prohibit practices deemed to have greater conflicts of interest, e.g., bonuses tied to commission or revenue goals and enhanced payout arrangements.[104] One commenter stated that enhanced compensation means something different to a wirehouse representative than transition assistance for a representative in an independent broker-dealer model who employs a staff, has mortgage payments on leased commercial space, and may take three or more months to get the business up and running.[105]

FINRA believes the proposed rule change to require disclosure of recruitment compensation ranges beginning at $100,000 as applied separately to aggregate upfront payments and aggregate potential future payments would establish a threshold that would exclude many payments intended only to cover transition assistance, such as relocation and various overhead costs (e.g., office equipment, new business cards and letterhead). FINRA believes amounts above that threshold, particularly those based on a representative's trailing 12, are properly included in the disclosure requirement, as they are significant enough to bear on the representative's motivation to move firms and may prompt questions by former customers based on a review of their account activity.

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101 Burns, Sutherland.

102 Summit-E.

103 Commonwealth, FORM, Herskovits, Lincoln, LPL, Sutherland.

104 Wedbush.

105 Ameriprise.

FINRA also notes that the proposed rule change would permit members to net out any increased costs incurred directly by the registered person in connection with transferring to the member in calculating whether a threshold is met.

With respect to commenters' suggestion that asset-based recruitment compensation be excluded from the proposed rule change, FINRA does not agree. FINRA believes that asset-based recruitment packages present the same level of conflicts of interest when a member or a representative attempts to induce a former customer to transfer assets to the member because the representative's interest in asset gathering at the new firm may not align with the customer's best interest as to where to maintain those assets. As noted in Item 3, most recruitment compensation packages are based, in part, on a representative's asset levels at his or her previous firm and members take these numbers into consideration when calculating recruitment compensation packages with an understanding that many of the representative's former customers will follow their representative to a new firm.

De Minimis Exception

The Notice Proposal included an exception to the disclosure requirement for recruitment compensation of less than \$50,000. The proposal requested comment on whether FINRA should establish an amount different from the proposed \$50,000 for a de minimis exception. One commenter supported the \$50,000 de minimis proposal, asserting that it was reasonable, would significantly reduce the burden for firms that pay only true transition assistance, and would allow firms to cover a representative's out of pocket expenses in many cases without triggering disclosure.[106] Several commenters

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106 HDVest.

stated that $50,000 is an arbitrary and nominal threshold.[107] Some commenters stated that the proposed de minimis was too low a threshold amount to cover the substantial costs incurred by representatives who transition firms.[108] Two of these commenters suggested that the de minimis exception should be raised to $100,000 or higher.[109] Other commenters thought the $50,000 disclosure was too high and suggested a $25,000 de minimis exception.[110] Others suggested an alternative to the $50,000 de minimis amount that would require disclosure of any recruitment compensation that exceeds a certain percentage of the previous 12-month calendar year commissions.[111] One commenter asked if FINRA considered account transfer and registration costs when establishing the de minimis exception.[112] A few commenters warned that firms may restructure arrangements and use the de minimis exception as a means to avoid disclosure.[113] Two commenters ask how the de minimis exception would be calculated in cases of unspecified dollar amounts at the time of transfer, such as covering transfer costs and deferred incentives.[114]

In response to the comments, FINRA revised the proposal to include an effective de minimis exception for any recruitment compensation in an amount less than $100,000,

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107 Commonwealth, Cutter, FSI, Lax, Smith Moore, Summit-B, Summit-E.

108 Commonwealth, Lax, NAIFA, Wedbush.

109 NAIFA, Wedbush.

110 PIABA, UBS.

111 Commonwealth, Korth, Summit-B, Summit-E.

112 Taylor English.

113 Lax, Miami, Showalter.

114 NAIFA, Taylor English.

as applied separately to aggregate upfront payments and aggregate potential future payments. In addition, the proposed rule change permits members to net out from the calculation of recruitment compensation (and total compensation for purposes of reporting to FINRA) any increased costs incurred directly by the representative in connection with transferring to the member. FINRA believes that the combination of raising the de minimis amount and allowing firms to net out costs directly incurred by a representative in a transfer addresses many of the commenters' concerns.

With respect to the comments regarding how the de minimis exception would be calculated in cases of unspecified dollar amounts at the time of transfer, such as covering transfer costs and deferred incentives, FINRA notes that the proposed rule change includes supplementary material that clarifies that the member must assume that all performance-based conditions on the compensation are met and may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied.

Notice Proposal Should be Expanded

Numerous commenters questioned why FINRA singled out recruitment compensation when it is just one piece of a total compensation package offered by a recruiting firm.[115] Such commenters noted that isolating recruitment compensation for inspection by customers is misleading because it does not present a conflict of interest significantly greater than other incentives offered in the ordinary course of business or in the form of retention bonuses and other compensation. One commenter recommended that firms report to FINRA their recruitment compensation, retention compensation and

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115 BDA, Bischoff, Burke, Burns, Capstone-AG, FORM, FSI, MarketCounsel, Miami, Lincoln, NAIFA, NASAA, Smith Moore, Steiner, Taylor English, WFA.

other incentives, and FINRA can determine whether a compensation package is justified.[116] One commenter noted that the proposal seemed unnecessarily limited by excluding such benefits as new territories, new titles, and new high net worth customers.[117] Another commenter suggested that FINRA require disclosure of additional gross compensation paid to the representative when it is more than 15 percentage points higher than a representative received at his or her previous firm.[118]

One commenter suggested that FINRA consider the fair dealing obligations of the representative's former firm when communicating with a representative's clients about staying with the firm because they may offer financial incentives to retain the accounts.[119] One commenter noted that many current employee contracts are full of deterrent and non-compete provisions that can also be seen as conflicts of interest.[120] In addition, one commenter noted that branch managers may be paid a bonus six to nine months after a representatives departs a firm based on the amount of assets that did not follow the representative to his or her new firm.[121] Another commenter stated that firms should be required to disclose when they terminate representative payouts thus incentivizing the representative to look for new opportunities.[122]

FINRA understands the commenters' concerns that the proposal does not require

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116 Smith Moore.

117 Plexus.

118 Korth.

119 WFA.

120 Spartan.

121 Burns.

122 Showalter.

disclosure of retention bonuses and other incentive compensation to customers. With the proposed rule change, FINRA is primarily concerned with providing customers impactful information to consider when deciding whether to transfer assets to a representative's new firm. Therefore, in response to these comments, FINRA has focused more narrowly on the costs and conflicts associated with that decision by a customer. FINRA notes that incentives offered while the representative is situated at a firm do not implicate the same considerations, such as transfer costs and portability issues.

However, FINRA is interested in how compensation packages may be influencing representatives and their sales practice activities, so it is proposing a requirement that members report to FINRA at the beginning of the employment or association of a representative that has former customers if the member reasonably expects the total compensation paid to the representative by the member during the representative's first year of employment or association with the member to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000. In determining total compensation, the member must include any aggregate upfront payments, aggregate potential future payments, increased payout percentages or other compensation the member reasonably expects to pay the representative during the first year of employment or association with the member. FINRA will review the proposed rule within an appropriate period after its approval and implementation to determine whether it is achieving its intended purpose and whether it is having unintended effects. As part of that review, FINRA will determine whether to eliminate the reporting requirement if the information is not useful, or expand it to other material increases in compensation, such as retention bonuses, that may result in increased risk to customers.

One commenter stated that the proposal should more clearly spell out for customers the practical and personal impacts of the potential conflicts to permit an informed decision about whether to transfer assets to the representative's new firm.[123] Another commenter suggested that investors should have answers to questions such as whether: (1) products and services can be transferred to the new firm; (2) the investor will have to pay fees to the old or new firm to make a transition; or (3) the recruitment compensation package involves sales targets or other incentives that may impact their accounts.[124] The proposed rule change addresses these comments by requiring disclosure to former customers if transferring the former customer's assets to the member will result in costs to the former customer, such as account termination or account transfer fees from the former customer's current firm or account opening or maintenance fees at the member, that will not be reimbursed by the member, and if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets to the member or inactivity fees to leave those assets with the former customer's current firm. In addition, the proposed rule would require disclosure of the basis of any aggregate upfront payments and aggregate potential future payments received, or to be received, of at least $100,000 by the representative. FINRA believes such disclosure will prompt a dialogue between former customers and their representatives about the impacts the structure and magnitude of a recruitment package may have had on their accounts at the previous firm, and may have on an account at the recruiting firm if the customer decides to transfer assets.

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123 SIFMA.

124 Edward Jones.

Disclosure at First Contact with a Former Customer

The Notice Proposal required disclosure of the details of the enhanced compensation to be made orally or in writing at the time of first individualized contact by the member or representative with the former customer after the representative has terminated his or her association with the previous firm. If the disclosure was made orally, the recruiting firm also would have been required to provide the disclosure in writing to the former customer with the account transfer approval documentation. When individualized contact with that former customer had not occurred and the customer sought to transfer an account from the previous firm to a broker-dealer account assigned to the representative with the recruiting firm, the recruiting firm also would have been required to provide the disclosure in writing to the former customer with the account transfer approval documentation. The Notice Proposal asked for comment on whether the proposed rule should require written disclosure at first individualized contact in all instances, rather than allowing oral disclosure.

Many commenters opposed the proposal to require oral disclosure of recruitment compensation at the time of first individualized contact by the member or the representative, contending that such a requirement is unworkable and would present significant tracking and supervisory challenges for recruiting firms.[125] One commenter supported oral disclosure at first contact in lieu of written disclosure, stating that written disclosure at first contact is not practical from a business standpoint, jeopardizes the representative's move to the new firm, delays the transfer, and is a segmented

125 Advisor Group, Cetera, Cutter, Merrill, Miami, PIABA, Showalter, Summit-B, Taylor English, WFA.

approach.[126] Two commenters requested clarification that the requirement is limited to the initial contact that relates to the former client's transfer of an account and not an announcement of the representative's new employment.[127]

The proposed rule change retains the requirement to provide oral disclosures to a former customer when a member or representative makes individualized oral contact to attempt to induce the former customer to transfer assets to the member. FINRA believes that the administrative and tracking challenges of oral disclosure asserted by commenters do not outweigh the value in providing disclosures at the time of first individualized contact because it is the point at which a customer begins the decision-making process on whether to follow a representative to a new firm. 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 to support their contention that oral disclosure at first individualized contact would be unworkable for recruiting firms.

Under the proposed rule, FINRA would consider a phone call to a former customer announcing a representative's new position with the member to qualify as first individualized contact and an attempt to induce the former customer to transfer assets to the member even when the conversation is limited to an announcement. Therefore, the proposed disclosures must be provided orally during the phone call and must be followed

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126 Summit-E.

127 Ameriprise, Gehring.

by written disclosures sent within 10 business days from such oral contact or with the account transfer approval documentation, whichever is earlier.

One commenter supported written disclosure at first individualized contact, noting that disclosure may be overlooked by a customer if written disclosure is not required until the account transfer documentation.[128] Several commenters objected to the proposal to require written disclosure at first individualized contact, stating that it is impractical and interferes with the representative's ability to timely contact customers.[129] These commenters suggested instead that written disclosure be required at or prior to account opening because it gives customers an opportunity to comprehensively review the disclosure.

The proposed rule change retains the requirement to provide written disclosures at the time of first individualized contact with a former customer if such contact is in writing. FINRA believes disclosure at first individualized contact is more effective than disclosure at or prior to account opening because customers typically have already made the decision to transfer assets by that point in the process. FINRA does not believe that it is particularly burdensome to require members to include as part of a written communication to former customers a disclosure form 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 the information required by the proposed disclosures should be accessible to the recruiting firm and the representative at the time first contact is made by the recruiting form or the representative. The proposed rule change provides

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128 PIABA.

129 Commonwealth, Lax, Merrill, Summit-B, Summit-E, Taylor English, UBS, WFA.

that a recruiting firm may rely on the reasonable representations of the representative, supplemented by the actual knowledge of the recruiting firm, in determining whether a disclosure must be made to a former customer. If after considering the representations of the newly hired representative, the firm cannot make a determination regarding the portability of a former customer's products, the firm must advise former customers in the disclosure to ask their current firm whether any of their securities account assets will not transfer and what costs, if any, the customers will incur to liquidate and transfer such assets or keep them in an account with their current firm. The firm must further disclose that nontransferable securities account assets will be identified to the former customer in writing prior to, or at the time of, validation of the account transfer instructions.

The Notice Proposal also solicited comment on whether the proposal should require a representative to disclose specific amounts of recruitment compensation to any customer individually contacted by the representative regarding such transfer while the representative is still at the previous firm. Numerous commenters objected to such a requirement while the representative is still at the previous firm,[130] suggesting that it would be unworkable from an operational and supervisory standpoint,[131] unnecessary to fulfill the goals of the proposal,[132] would interfere with the representative's ability to give notice to the firm, and may violate existing statutory or contractual obligations to the firm.[133] Based on the comments, FINRA did not incorporate such a requirement in the

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130 Advisor Group, Ameriprise, Cetera, Lax, Taylor English, SIFMA, UBS, Wedbush, WFA.

131 Ameriprise, SIFMA.

132 Taylor English, WFA.

133 Lax.

proposed rule change. However, if FINRA finds that representatives are contacting former customers before association or employment with the new firm as a way to avoid making the disclosures required by the proposed rule, FINRA will consider future rulemaking in this area.

One-Year Disclosure Period

The Notice Proposal would have required the proposed disclosure to former customers for one year following the date the representative associates with the recruiting firm. The Notice Proposal requested comment on whether the proposal should apply a different time period. Commenters had mixed views on the issue. Three commenters supported the proposed disclosure period of one year following the date the representative associates with the recruiting firm.[134] Four commenters recommended that the disclosures should apply for the period that the representative is receiving enhanced compensation.[135] Two commenters recommended a disclosure period of 90 days from the date the representative associates with the new firm[136] and one commenter recommended 90 to 180 days from such date.[137] One commenter suggested a disclosure period of six months to one year from the date of hire because most representatives contact their clients within the first six months of employment.[138] Another commenter

134 Summit-B, UBS, WFA.

135 Cornell, Miami, PIABA, Ruchin.

136 Commonwealth, Sutherland.

137 Summit-E.

138 Wedbush.

stated that the one-year time period is arbitrary and seems extensive based on typical transfer time.[139]

The proposed rule change retains the proposed requirement for disclosure to former customers for a period of one year following the date the representative begins employment or associates with a member. As noted in Item 4, FINRA understands that most customers who transfer assets to the recruiting firm do so soon after the representative changes firms so the one-year period should be sufficient to ensure that virtually all former customers that the recruiting firm or representative attempt to induce to transfer assets to the recruiting firm receive the disclosure. FINRA is not proposing a shorter time period for the proposed disclosures because it also understands it may take some former customers longer to make a determination to transfer assets to the representative's new firm, particularly if such customer is initially hesitant about transferring assets to the new firm. FINRA believes the disclosure information is equally relevant for customers that wait some time to consider transferring assets to the new firm and that one year is a reasonable cutoff. FINRA believes the burden of compliance should diminish over the year period, consistent with early efforts to induce former customers to transfer their assets.

<u>Who Should Receive Disclosure</u>

The Notice Proposal would have required disclosure to any former customer with an account assigned to the representative at the previous firm who is individually contacted by the recruiting firm or representative, either orally or in writing, regarding the transfer of the securities employment (or association) of the representative to the

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139 Cutter.

recruiting firm; or seeks to transfer an account from the previous firm to a broker-dealer account assigned to the representative with the recruiting firm. The Notice Proposal requested comment on whether the proposal should apply to all customers recruited by the transferring representative during the year after transfer. FINRA also asked for comment on whether it should apply to any new broker-dealer account assigned to the representative with the recruiting firm opened by a former customer of the representative in addition to accounts transferring from the previous firm.

Commenters were split on who should receive the proposed disclosure of specific compensation. One set of commenters suggested that the proposal should focus on the conflict that exists when a representative asks a former customer to move to the recruiting firm, so only former customers should receive the disclosure.[140] Another set of commenters stated that all clients, including new clients at the recruiting firm, should receive the proposed disclosure.[141] One commenter stated that the proposal should be expanded beyond retail customers to include institutional customers, because their asset levels make them particularly susceptible to misconduct aimed at increasing a representative's production.[142]

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

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140 Commonwealth, Cutter, NAIFA, Summit-B, Summit-E, Sutherland, UBS.

141 Cornell, Miami, PIABA, Ruchin.

142 Miami.

pursuant to FINRA Rule 4512(c); provided, however, accounts held by any natural person would not qualify for the institutional account exception. FINRA agrees with the commenters that suggested that the proposed rule change should address the conflict that exists when a representative attempts to induce a former customer to move assets to the recruiting firm. FINRA believes that former customers that a member or representative attempts to induce to transfer assets to a new firm are most vulnerable in recruitment situations because they have already developed a trusting relationship with the representative and because their assets may be both the basis for the representative's recruitment compensation (if the representative's upfront payments and potential future payments are asset-based or production-based) 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 disclosure would not have as significant an impact on their decision whether to transfer assets to a new firm.

Customer Affirmation

The Notice Proposal also requested comment on whether the proposed rule should include a requirement that a customer affirm receipt of the disclosure regarding recruitment compensation at or before account opening at the new firm. FINRA was interested, in particular, in the potential for such a requirement to delay the account opening process in a manner that could disadvantage customers. A majority of the commenters that responded to this request opposed a customer affirmation requirement because it would cause delays in the account opening and transfer process, create an additional layer of tracking, review and approval to members' operations, may disadvantage clients, and would impose costs and an undue burden on members.[143] Two commenters supported a requirement for written customer affirmation and suggested using a standard form in the new account paperwork that would not be overly burdensome to members.[144]

The proposed rule change does not incorporate a written customer affirmation requirement. FINRA believes that the requirements to provide disclosure 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 proposed disclosure before they decide to transfer assets to a new firm. At this time, FINRA does not believe that a customer affirmation is necessary to accomplish the goals of the proposed rule change, especially in light of commenters' concerns that such a requirement may delay the account opening and transfer process. FINRA will assess the effectiveness of the disclosure requirement without a customer affirmation requirement following implementation of the proposed rule. If FINRA finds that the proposed disclosures alone are not attracting the attention of customers to influence their decision-making process, then it will reconsider a customer affirmation requirement.

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143 Cetera, Janney, NAIFA, Taylor English, Wedbush.

144 Cornell, Summit-E.

Economic Impacts of the Notice Proposal

The Notice Proposal requested comments on the economic impact and expected beneficial results of the proposed rule. Specifically, FINRA asked for comment on what direct costs for the recruiting firm will result from the rule, and what indirect costs will arise for the recruiting firm or its transferring persons. Three commenters stated that the proposal will generate significant administrative challenges and implementation costs for firms and representatives, including additional paperwork and forms, tracking mechanisms, training, and new policies and procedures.[145] Two commenters stated that there will be initial implementation costs, but they are warranted to elevate industry standards and provide better information to clients before they transfer their accounts to a new firm.[146] One commenter stated that the disclosure can be included with new account documentation so it will not delay the account transfer process or impose significant costs on firms.[147] One commenter suggested that FINRA should conduct a cost-benefit analysis of the proposal that assesses the impact not only on customers, but also the attendant impact on representatives, firms, and restraints on trade.[148] Two commenters asked whether the proposal would include an obligation to disclose modifications to recruitment compensation packages with an updated disclosure to former customers who have already transferred assets to the recruiting firm.[149]

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145 Advisor Group, Summit-E, Sutherland.

146 Edward Jones, UBS.

147 Cornell.

148 Janney.

149 Cetera, Taylor English.

Despite a request for quantitative comments, the commenters that stated that the proposal will generate significant administrative challenges and implementation costs did not provide specific costs or empirical data upon which to base their assertions. FINRA has given careful consideration to the economic impacts of the proposed rule change. It has considered the comments to the Notice Proposal, as well as feedback from its advisory committees, other industry members and the public. Based on the input received, FINRA does not believe that the proposed rule change will result in unsupportable administrative and implementation challenges for members. As with most rule changes, the proposed rule change would likely require updates to members' systems and procedures; however, FINRA believes the burden of such updates are outweighed by the significant benefit to retail investors in receiving key information relevant to a decision to transfer their assets to a new firm and the benefit to FINRA's risk-based examination process by receiving information related to significant increases in a representative's compensation in the first year at a recruiting firm.

As discussed in Item 4, FINRA has made several changes to the Notice Proposal that will assist members and reduce the burdens of compliance: among other things, the proposed rule change includes a $100,000 de minimis exception that applies separately to aggregate upfront payments and aggregate potential future payments, allows members to net out costs paid to a representative as reimbursement for direct costs incurred by a representative in a move, includes a FINRA-developed disclosure template, and allows disclosure of recruitment compensation ranges instead of specific amounts to protect the privacy of transferring representatives. In addition, members may rely on the reasonable representations of a representative regarding the cost and portability disclosures and, although such disclosures must be affirmative as they relate to each former customer's assets, the disclosures do not have to be specific as to the amount of costs or products that will not transfer.

With respect to the commenters' question regarding disclosure of modifications to a representative's recruitment compensation package, FINRA is not aware that recruitment packages typically are modified after a recruited representative has associated with the recruiting firm. To the extent that practice occurs and is not designed to circumvent the requirements of the proposed rule, the proposed rule change would not require any such modifications to be disclosed to customers that have already transferred their accounts. FINRA notes that the proposed rule is focused on a former customer's decision to transfer assets to the recruiting firm. A modification to the recruitment package cannot affect the decisions of customers that have already transferred assets (unless they have additional assets that could still be transferred). However, FINRA cautions that any aspects of the recruitment package that were agreed upon prior to the representative associating with the recruiting firm – including any modifications that would take effect at a later date – would be considered either upfront or potential future payments for the purposes of the disclosure obligation.

Small Firms Concerns

The Notice Proposal solicited comment on whether the impacts of the proposal with respect to changes in business practices and recruiting efforts differentially will affect small or specialized broker-dealers. Six commenters stated that compliance with the proposal will be more difficult for small firms with limited operational resources and supervisory personnel and will make recruiting efforts more challenging.[150]

In crafting the proposed rule change, FINRA considered its potential impacts on small firms and specialized broker-dealers. The proposed rule change provides for disclosure of recruitment compensation in ranges only for amounts of $100,000 or more, as applied to two separate categories of recruitment compensation. Based on input from members, including independent broker-dealers and small firms, FINRA believes that the $100,000 thresholds as applied separately to aggregate upfront payments and aggregate potential future payments for purposes of disclosure to former customers and the greater of 25% or $100,000 over the representative's prior year's compensation for purposes of reporting total compensation to FINRA will exclude most small firms and specialized broker-dealers from the proposed rule because such firms are not likely to offer recruitment compensation or total compensation packages that meet the proposed thresholds, particularly when, as permitted under the proposed rule, direct costs incurred by the representative in connection with the transfer are netted out from the calculation.[151] FINRA believes that, to the extent that a small firm or specialized broker-dealer does pay the significant levels of recruitment compensation captured by the proposed rule change, their customers should similarly be provided the disclosure that will facilitate an informed decision as to whether to transfer assets to the representative's new firm. FINRA also is proposing disclosure to former customers via a FINRA-developed template that would save all members, small and large, from the resources,

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150 Cetera, Gompert, Janney, Plexus, Summit-E, Whitehall.

151 See proposed FINRA Rule 2243.04.

administration and costs related to developing a disclosure form that would meet the requirements of the proposed rule.

Alternatives Suggested

One commenter recommended that FINRA adopt a rule that would prohibit recruitment compensation over $100,000 to level the recruiting playing field among all members and eliminate potential or perceived conflicts of interest.[152] Another commenter suggested that the disclosure should be given by the firm the representative is leaving and should be provided to all clients of the departing representative at the time of his or her resignation.[153] A few commenters believed that placing the burden on firms to enhance their supervisory structure and develop comprehensive policies and procedures related to conflicts identification and disclosure would better serve the industry and investors.[154] One commenter suggested that FINRA allow members to make their own business decisions and determine what is competitive and profitable for them regarding recruitment practices.[155] Another commenter suggested amending the proposal to require the member to disclose compensation paid by its non-member affiliates to a transferring representative to avoid a loophole for dual-hatted representatives.[156] One commenter asked FINRA to evaluate whether the proposed rule should apply to all client-facing professionals (investment bankers, institutional sales representatives, financial planners,

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152 Wedbush.

153 Oppenheimer.

154 FSI, Janney, NASAA.

155 Midwestern.

156 Gehring.

sales traders) who receive recruitment compensation.[157] Two commenters stated that recruiting firms should be required to send clients a FINRA-drafted pamphlet that flags issues related to transitions, so clients can make their own determination as to what information they consider important in evaluating whether they should follow their representative to a new firm.[158]

As detailed in Item 4, FINRA has considered numerous alternatives suggested by the commenters to the Notice Proposal but believes that the proposed rule change strikes an appropriate balance to increase transparency with respect to recruitment practices without creating unnecessary costs or burdens on members and their representatives. As to these commenters' suggestions, FINRA does not believe it appropriate to regulate the amount of recruitment compensation paid to representatives; rather, the proposed rule change seeks to provide disclosure related to compensation incentives to the extent it may impact a retail investor's decision whether to follow his or her representative to a new firm. FINRA believes the recruiting firm that is paying representatives recruitment compensation in amounts that meet the proposed thresholds is in the best position to provide the required disclosures. FINRA encouraged members in its Report on Conflicts of Interest to enhance their supervision of representative's activity around the time of compensation thresholds;[159] however, the primary focus of the proposed rule change is to provide retail investors with important cost information and transparency of conflicts

157 Janney.

158 Burns, Miami.

159 Report on Conflicts of Interest, FINRA, October 2013, available at, http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.

related to the decision whether to transfer assets to a representative's new firm. FINRA also notes that the proposed rule change would require disclosure of recruitment compensation paid by non-member affiliates to the extent those amounts, when combined with any recruitment compensation paid by the recruiting member, exceed the $100,000 thresholds for each category of recruitment compensation. The proposed rule change would apply to recruitment compensation paid to any registered person; however, FINRA notes that investment bankers and other types of registered persons not involved in retail sales are unlikely to have retail customers whose assets might be induced to transfer.

Finally, FINRA believes the more specific disclosure that would be required under the proposed rule change will appreciably benefit retail customers more than a general pamphlet that sets out considerations without providing the actual information related to those considerations. FINRA will continue to evaluate alternatives based on the comments received on the revised proposal.

Implementation and Requests to Delay Rulemaking

Some commenters expressed concerns regarding the implementation of the proposal. Five commenters noted that due to the nature of some enhanced compensation arrangements (e.g., deferred incentives or modifications to a package) it will be difficult to calculate dollar amounts at the time of transfer.[160] Two commenters requested guidance on how recruitment compensation should be calculated and disclosed, by group or individual, where bonuses are given to a group of brokers and assistants who move to a new firm together.[161] One commenter requested that FINRA allow adequate time for

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160 Ameriprise, NAIFA, Summit-B, Sutherland, Taylor English.

161 Cetera, LaBastille.

implementation.[162] Another commenter suggested limiting the application of the rule to those hired after the rule goes into effect.[163]

One commenter suggested that it would be prudent for FINRA to assemble a working group to collect qualitative information related to the use of recruitment compensation in the industry to make a well-informed decision about how best to proceed in order to achieve its intended goals.[164] One commenter noted that the proposal should consider FINRA's proposal in Regulatory Notice 10-54 (Disclosure of Services, Conflicts and Duties) and Section 919 of the Dodd-Frank Act,[165] which grants permissive authority to the SEC to engage in rulemaking with respect to compensation practices, because a comprehensive review of the required disclosure regime for broker-dealers would result in a more thoughtful, consistent and effective set of disclosures that would be most likely to benefit investors.[166] Another commenter suggested that FINRA integrate the proposal with the pre-engagement disclosures contemplated in Regulatory Notice 10-54.[167] Two commenters recommended that FINRA delay further regulatory action until the conflicts initiative is completed.[168] Finally, one commenter noted that

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162 Advisor Group.

163 Gehring.

164 FSI.

165 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

166 Sutherland.

167 FSI.

168 Advisor Group, FSI.

FINRA should do a global conflicts assessment not limited to this isolated and singular conflict.[169]

FINRA believes that members are in a position to calculate recruitment compensation for purposes of the proposed disclosure requirement at the time a representative or the member attempts to induce a former customer of the representative to transfer assets to the representatives' new firm. FINRA notes that the representative will already be associated with or employed by the member, so all compensation arrangements between the representative and the member should be clear and agreed to by all parties. The proposed rule change also provides guidance with respect to calculating recruitment compensation and total compensation for the purpose of the proposed disclosure and reporting requirements, respectively: members must assume that all performance-based conditions on the representative's compensation are met, may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied and may net out any increased costs incurred directly by the registered person in connection with transferring to the member. With respect to a transfer of a group, or team, of representatives and staff, FINRA believes that members can make a reasonable determination regarding the application of recruitment compensation to each individual that transferred to the firm to make the required disclosures. FINRA will consider further guidance regarding application of the proposed rule change as issues arise.

FINRA understands the commenters' suggestions to delay rulemaking and incorporate the proposed rule change into other ongoing efforts related to conflicts of

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169 Janney.

interest. However, FINRA believes that the proposed rule change should move forward at this time, as it is narrowly focused on a retail investor's important decision whether to transfer assets to a new firm, rather than conflicts associated with compensation practices more broadly. FINRA believes that former customers should begin receiving the proposed disclosures as soon as practicable so that they are fully informed before making a decision to transfer assets to a representative's new firm. FINRA will consider how the proposed rule change fits within the larger scheme of conflicts of interest regulations as the timetables on such other proposals progress. In addition, FINRA will establish a reasonable implementation period for the proposed rule change to provide members with sufficient time to update their internal systems and policies.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[170]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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170 15 U.S.C. 78s(b)(2).

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 13-02 (January 2013).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 13-02.

Exhibit 3. Disclosure template.

Exhibit 5. Text of proposed rule change.

Regulatory Notice 13-02

Recruitment Compensation Practices

FINRA Requests Comment on a Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices

Comment Period Expires: March 5, 2013

January 2013

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

Key Topics
- Compensation
- Conflicts of Interest
- Customer Account Transfers
- Disclosure

Referenced Rules & Notices
- FINRA Rule 4512

Executive Summary

Many member firms offer significant financial incentives to recruit registered representatives to join their firms, yet these compensation arrangements are not disclosed to customers when they are asked to transfer their accounts to a representative's new firm. To address conflicts of interest relating to recruitment compensation practices, FINRA seeks comment on a proposed rule that would require specific disclosure by the recruiting member firm of the financial incentives a representative receives as part of his or her relationship with the new firm. The recruiting member firm would be required to provide the disclosure before a former retail customer of the representative makes a final determination to transfer an account to the new firm.

The text of the proposed rule can be found at www.finra.org/notices/13-02.

Questions concerning this *Notice* should be directed to:

- Philip Shaikun, Associate Vice President, Office of General Counsel (OGC), at (202) 728-8451; and
- Erika Lazar, Assistant General Counsel, OGC, at (202) 728-8013.

Financial Industry Regulatory Authority

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by March 5, 2013.

Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background & Discussion

A number of securities firms offer enhanced compensation packages to induce registered representatives to move from one firm to another. These inducements typically take the form of some combination of upfront bonuses, forgivable loans, transition assistance and back-end production bonuses. Such financial incentives may amount to as much as two to three times the commissions and fees produced by a representative in the previous year.[3] FINRA understands that currently the prominent factor in structuring recruitment compensation packages or transition assistance is the representative's "trailing twelve," *i.e.*, the most recent 12-month gross production or revenue.

These recruitment programs raise conflicts of interest that often are not disclosed when registered representatives encourage former customers to move to their new firm. Instead, many representatives typically address only the platform, products and services of the new firm. To inform customers of the conflicts raised by recruitment packages, FINRA is requesting comment on a proposed rule to require detailed disclosure of the recruitment incentives provided to a registered representative in conjunction with a move to a new firm.

Enhanced Compensation Packages

In general, enhanced compensation packages offered to recruit a representative to leave one firm and join another provide an additional and significant layer of compensation on top of the commission payout grid compensation that the representative receives based on production at the new firm. The disclosure proposal applies only to that additional layer of compensation. The amount and structure of these additional arrangements depend on multiple factors, including the firm from which the representative is transferring, the representative's book of business, and the representative's years of service. Most recruitment compensation is calculated based on the representative's trailing production at the previous firm. Recruitment compensation packages also may depend on the business model of the firm offering the package.

Incentives at some firms appear to tend toward transition assistance, which may include moving expenses, leasing space, furniture, staff and termination fees associated with moving accounts. Other firms offer an upfront bonus that takes the form of a one-time signing bonus or a forgivable loan, based on a percentage of the representative's trailing twelve. To encourage an extended commitment to the new firm, some firms offer representatives a combination of a forgivable loan and an annual bonus in which the representative signs a promissory note for an upfront loan and receives an annual bonus that equals the annual installment due on the loan at the time the loan payment is due.[4] Firms also may offer a bonus based on a percentage of assets brought over from the representative's former firm, or bonuses (or bonus and loan combination packages) based on the representative's production of new business at the new firm, which are known as "back-end" or "production" bonuses, structured to encourage a representative to remain at the new firm.

Concerns Regarding Enhanced Compensation Packages

Enhanced compensation packages offered to recruit representatives have been the subject of regulatory concern in the past. SEC Chairman Schapiro identified potential conflicts raised by recruitment compensation practices in 2009 in an open letter to broker-dealer CEOs.[5] The letter noted that:

> Some types of enhanced compensation practices may lead registered representatives to believe that they must sell securities at a sufficiently high level to justify special arrangements that they have been given. Those pressures may in turn create incentives to engage in conduct that may violate obligations to investors. For example, if a registered representative is aware that he or she will receive enhanced compensation for hitting increased commission targets, the registered representative could be motivated to churn customer accounts, recommend unsuitable investment products or otherwise engage in activity that generates commission revenue but is not in investors' interest.

FINRA understands that in response to the 2009 letter, for a time many firms restructured recruitment compensation arrangements to avoid incentivizing such activities. While there may be legitimate business rationales for offering enhanced compensation and transition assistance to registered persons, these practices continue to raise conflicts of interest.[6] The proposed rule focuses on the undisclosed conflict that representatives have received lucrative financial incentives, often based on trailing production, to move firms, and customers that are solicited to follow their representatives are not directly notified of these practices. FINRA believes that customers would benefit from knowing the incentives that may have led their representative to change firms before they transfer an account to a new firm. Therefore, the proposed rule would provide transparency to customers at the previous firm before they contract to transfer their accounts to the representative's new firm.

Proposal

FINRA believes that customers would benefit from being told the material conflicts arising from a registered person being paid recruiting incentives to change firms. To that end, FINRA requests comment on a proposed rule that would require a member firm (recruiting member) that provides, or has agreed to provide, to a registered person enhanced compensation in connection with the transfer to the recruiting member of the securities employment (or association) of the registered person from another financial services industry firm (previous firm) to disclose, for one year following the date the registered person associates with the recruiting member, the details of such enhanced compensation to any former customer with an account assigned to the registered person at the previous firm who (1) is individually contacted by the recruiting member or registered person, either orally or in writing, regarding the transfer of the securities employment (or association) of the registered person to the recruiting member; or (2) seeks to transfer an account from the previous firm to a broker-dealer account assigned to the registered person with the recruiting member.

The proposal would require disclosure of the details of enhanced compensation to be made orally or in writing at the time of first individualized contact by the recruiting member or registered person with the former customer after the registered person has terminated his or her association with the previous firm. If such disclosure is made orally, or if the customer seeks to transfer an account from the previous firm to a broker-dealer account assigned to the registered person with the recruiting member and no individualized contact with that customer has occurred (*e.g.*, the customer learns of the registered person's move from a general announcement or other sources), the recruiting member would be required to provide written disclosure to the customer with the account transfer approval documentation. The written disclosure must be clear and prominent, and must include information with respect to the timing, amount and nature of the enhanced compensation arrangement. For example, a general disclosure in small type that a registered person received an unspecified bonus in connection with his or her employment at a new firm would not be sufficient under the proposal.

For purposes of the proposed rule, the term "enhanced compensation" means compensation paid in connection with the transfer of securities employment (or association) to the recruiting member other than the compensation normally paid by the recruiting member to its established registered persons. Enhanced compensation includes but is 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 member. It would not include, for example, the receipt of a higher payout at the recruiting member that was not otherwise related to the transfer of securities employment (or association). In addition, for purposes of the proposed rule, the term "financial services industry" means any industry regulated by the SEC, Commodity Futures Trading Commission, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

The proposed rule would exclude disclosure to customer accounts that meet the definition of an institutional account pursuant to FINRA Rule 4512(c), except any natural person or a natural person advised by a registered investment adviser.[7] Furthermore, a member would not be required to disclose enhanced compensation in an amount less than $50,000. The *de minimis* exception for enhanced compensation under $50,000 is intended to allow firms to offset a registered person's ordinary costs in the transition process, since such compensation does not raise the same degree of conflicts of interest as more lucrative enhanced compensation arrangements.

Request for Comment

In addition to generally requesting comments, FINRA specifically requests comment regarding whether the proposed rule should:

- require written disclosure at first individualized contact in all instances, rather than allowing oral disclosure at this point;
- apply to all customers recruited by the transferring registered person during the year after transfer;
- apply to any new broker-dealer account assigned to the registered person with the recruiting member opened by a former customer of the registered person in addition to accounts transferring from the previous firm;
- require the registered person to disclose the details of any enhanced compensation to be received in connection with a transfer of securities employment (or association) to a recruiting member to any customer individually contacted by the registered person regarding such transfer *while the registered person is still at the previous firm*;

- include a requirement that a customer affirm receipt of the disclosure at or before account opening at the new firm. FINRA is interested, in particular, in the potential for such a requirement to delay the account opening process in a manner that could disadvantage customers;
- apply to a time period different from the proposed one year following the date the registered person associates with the recruiting member;
- establish an amount different from the proposed $50,000 for a *de minimis* exception; or
- apply an alternative approach that would require a general upfront disclosure by the recruiting member or registered person that the registered person is receiving, or will receive, material enhanced compensation in connection with the transfer of securities employment (or association) to the recruiting member and that additional specific information regarding the details of such compensation is available at a specified location on its website or upon request.

FINRA also specifically requests comments on the economic impact and expected beneficial results of the proposed rule.

- What direct costs for the recruiting member will result from the rule?
- What indirect costs will arise for the recruiting member or its transferring persons?
- What benefits would result for individual investors and their agents? How extensive are these benefits?
- Are the costs imposed by the rule warranted by the potential harm to customers arising from the payment by member firms of recruitment compensation to incentivize representatives to change firms without disclosure of such incentives to transferring customers?
- Is the proposed rule well designed to reduce conflicts related to recruitment compensation practices?
- How will the rule change business practices and competition among firms with respect to recruiting and compensation practices? Will these impacts differentially affect small or specialized broker-dealers?
- What second order impacts could result?

We request quantified comments where possible.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See* *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.

2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

3. *See, e.g.*, J. Horowitz, *What Meltdown? Broker Bidding Wars Are Back*, Reuters, April 11, 2012.

4. For example, a recruiting member may offer a representative a combination loan and bonus agreement where the representative signs a promissory note for $900,000 with a term of nine years. The representative receives the loan up front and is expected to pay nine annual installments of $100,000 plus interest until maturity. On the date the annual installment is due on the loan, the member firm pays the representative a bonus in the exact amount of the loan payment due, including principal and interest.

5. *See* Open Letter to Broker-Dealer CEOs from SEC Chairman Mary L. Schapiro, dated August 31, 2009.

6. FINRA notes that we are currently discussing with several major firms how they identify and manage conflicts of interest. *See* Targeted Examination Letters Re: Conflicts of Interest (July 2012).

7. FINRA Rule 4512(c) defines 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 person (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

Financial Industry Regulatory Authority

Issues to consider when your broker changes firms

You're receiving this notice because your broker has changed firms. If you're thinking about whether to follow your broker or stay with your current firm, it's a good idea to examine key issues that will help you make an informed decision.

A good relationship with your broker is surely valuable to you, but it's not the only factor in determining what's in your best interest. Before making a final decision, talk to your broker or someone at your current firm about the following questions, and make sure you're comfortable with the answers.

Could financial incentives create a conflict of interest for your broker?

In general, you should discuss the reasons your broker decided to change firms. Some firms pay brokers financial incentives when they join, which could include bonuses based on customer assets the broker brings in, incentives for selling in-house products or a higher share of commissions. Similarly, some firms pay financial incentives to retain brokers or customers. While there's nothing wrong with these incentives in either case, they can create a conflict of interest for the broker. Whether you stay or go, you should carefully consider whether your broker's advice is aligned with your investment strategy and goals.

Can you transfer all your holdings to the new firm? What are the implications and costs if you can't?

Some products, such as certain mutual funds and annuities, may not be transferable. If that's the case, you'll face an additional decision if you follow your broker to the new firm: whether to liquidate the non-transferable holdings or keep just these holdings at your current firm. Either way, there could be costs to you, such as fees or taxes if you liquidate, or different service fees if you leave some assets at the current firm. Your broker should be able to explain the implications and costs of each scenario.

Continued on reverse

What costs will you pay—both in the short term and ongoing—if you change firms?

In addition to liquidation fees or taxes if you sell non-transferable assets, you may have to pay account termination or transfer fees if you close your current account, or account opening fees at the new firm. (Even if the new firm waives its fees as an incentive to transfer, that wouldn't reduce any transfer or closure costs at your current firm.) Moving forward, the new firm may have a different pricing structure for maintaining your account or making transactions (such as fee-based instead of commissions, or vice versa), which could increase or lower your account costs. Your broker should be able to explain the pricing structure of the new firm and how your ongoing costs would compare.

How do the products at the new firm compare with your current firm?

Of course, not all firms offer the same products. There may be some types of investments you've purchased in the past or are considering for the future that aren't available at the new firm.

If that happens, you should feel comfortable with the products they offer as alternatives. If you tend to keep a lot of cash in your account, ask what investment vehicles are available at the new firm for the cash sweep account and whether the interest rate would have an effect on your return.

What level of service will you have?

Whether you follow your broker to the new firm or choose another broker at your current firm, consider whether you'll have access to the types of service, support and online resources that meet your needs.

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined.

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2200. COMMUNICATIONS AND DISCLOSURES

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2273. Educational Communication Related to Recruitment Practices and Account Transfers

(a) Educational Communication Delivery Requirement

A member that hires or associates with a registered person shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, individually contacts the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent individualized contact, transfers assets to an account assigned, or to be assigned, to the registered person at the member.

(b) Means and Timing of Delivery

(1) A member shall deliver the communication in paragraph (a) at the time of first individualized contact with a former customer by the registered person or the member regarding the former customer transferring assets to the member.

(A) If the contact is in writing, the written communication required in paragraph (a) must accompany the written communication. If the contact is by electronic communication, the member may hyperlink directly to the educational communication.

(B) If the contact is oral, the member or registered person must 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 educational communication must 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.

(2) If a former customer attempts to transfer assets to an account assigned, or to be assigned, to the registered person at the member, but no individualized contact with the former customer by the registered person or member occurs before the former customer seeks to transfer assets, the member shall deliver the educational communication in paragraph (a) to the former customer with the account transfer approval documentation.

(3) The delivery of the communication required by paragraph (a) shall apply for a period of three months following the date the registered person begins employment or associates with the member.

• • • Supplementary Material:---------------

.01 Definition. For the purpose of this Rule, the term "former customer" shall mean any customer that had a securities account assigned to a registered person at the registered person's previous firm. This term shall not include an account of a non-natural person that meets the definition of an institutional account pursuant to Rule 4512(c).

.02   Express Rejection by Former Customer. The requirement in paragraph (a) shall not apply when the former customer who the member, directly or through that registered person, individually contacts to transfer assets 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 the registered person begins employment or associates with the member, then the requirements of paragraph (b)(2) shall apply.

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