Janney

Gregory B. McShea
Senior Vice President
General Counsel

JANNEY MONTGOMERY SCOTT LLC
Office of General Counsel
1717 Arch Street
Philadelphia, PA 19103
215.665.6086
T 800.526.6397
F 215.665.0824
gmcshea@janney.com
www.janney.com

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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.

<u>The Proposed Disclosure Requirement Should Leverage Existing Industry Practices</u>

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 <u>and</u> 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.

<u>Shorten the Required Disclosure Period from 6 Months to 90 Days</u>

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.

<u>The Tone of the Educational Communication Should be More Balanced</u>

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 the Financial Industry Regulatory Authority.

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.

Learn more at www.finra.org.