

July 13, 2015

**By Electronic Mail** ([pubcom@finra.org](mailto: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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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. Suggested Changes to the Proposal**

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 communication 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?

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<sup>2</sup> 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@lfn.com](mailto:carrie.chelko@lfn.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.