

VIA ELECTRONIC MAIL

January 20, 2016

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 First Street NE
Washington, D.C. 20549

Re: SR-FINRA-2015-057, Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers)

Dear Mr. Errett:

On December 30, 2015, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed rule (proposal) to adopt FINRA Rule 2273. FINRA's proposal would 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.²

The Financial Services Institute (FSI) appreciates the opportunity to comment on this important proposal.³ FSI commends FINRA for considering and addressing input and making considerable changes from its previous proposals.⁴ From its first inception as a proposed rule, FINRA has consistently considered industry input and has improved the rule, resulting in the current proposal which both benefits investors while addressing logistical considerations of firms and their associated persons.

Background on FSI Members

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

¹ FINRA Regulatory Notice 15-19, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf

² *Id.*

³ 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.

⁴ 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>

167,000 independent financial advisors, which account for approximately 64.5% percent of all 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

A. FSI's Previous Comments and an Overview of FINRA's Current Proposal

FINRA originally sought comment on its recruitment compensation rule in January 2013.⁵ In its original request for comment, FINRA would have required that broker-dealers notify their clients of the exact compensation package in excess of \$50,000.⁶ In our comments, FSI stated that our members support transparency for investors. However, FSI raised several concerns, including financial privacy and the seemingly arbitrary nature of the \$50,000 threshold.⁷

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.⁸ 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.⁹

In May 2015, FINRA filed Regulatory Notice 15-19, a proposal that would require a broker-dealer provide a client FINRA-created educational communication at or shortly after their financial advisor first attempts to induce a client to transfer their assets to the advisor's new firm.¹⁰ FINRA's states intent was that the educational communication would 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.¹¹ In its comments, FSI commended FINRA for updating its

⁵ FINRA Regulatory Notice 13-02, available at, <http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf>

⁶ *Id.*

⁷ FSI's Comment Letter on Regulatory Notice 13-02, available at, <http://www.finra.org/sites/default/files/NoticeComment/p220105.pdf>

⁸ 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>

⁹ FSI's Comments on SR-FINRA-2014-010, available at, <http://www.sec.gov/comments/sr-finra-2014-010/finra2014010-33.pdf>

¹⁰ FINRA Regulatory Notice 15-19, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf

¹¹ *Id.*

proposal. However, FSI suggested the proposal would benefit from clarification on its delivery requirement and that FINRA should consider addressing situations where an advisor's firm is acquired.¹²

FINRA's current proposal would require delivery of an 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."¹³ If the individualized contact is in writing, the educational communication must be provided as the time of the communication. If the communication is oral, it must be provided within three business days.¹⁴ FSI applauds FINRA for responding to the concerns of FSI and other industry groups about the operational challenges inherent in its previous proposals. FSI believes the approach of providing guidance that enables clients to ask the appropriate questions to their advisors when determining whether to transfer their assets strikes an effective balance between investor protection and operational feasibility.

B. FSI Applauds FINRA for Simplifying its Delivery Standard to assist Advisors and Firms to Easily Provide the Educational Communication to Clients.

In its current proposal, FINRA changed the standard for triggering the delivery of the educational communication. In its previous proposal, FINRA would have required delivery of the educational communication when the financial advisor attempted to induce a client to transfer their account.¹⁵ Under this standard, FSI believed the trigger for delivery of the educational communication would have been unclear and lead to confusion among firms as to what constituted 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. Under FINRA's previous standard, advisors and firms would have been confused as whether this sort of communication would have triggered the delivery requirement.

In its current proposal, FINRA provides a clear and straightforward standard. FINRA stipulates that the triggering event for delivery of the educational communication occurs when a firm or advisor makes an "individualized contact" to a client.¹⁶ Under this standard, any individual call or conversation an advisor has with a client, either in a social or business environment, regarding moving their account would trigger delivery of the educational communication. This standard provides clarity to financial advisors, who will know that their first conversation with a client notifying them of their move, whether the conversation is in person, in writing, or electronically would trigger the delivery requirement.

FINRA's simplified delivery standard will also assist advisors and firms in easily providing the educational communication to clients. If the first contact is in writing or electronically, the educational communication can easily be added to the letter or email notifying clients of the

¹² FSI's Comment letter on FINRA' Regulatory Notice 15-19, available at, https://www.finra.org/sites/default/files/notice_comment_file_ref/15-19_FSI_comment.pdf

¹³ SR-FINRA-2015-057, available at, http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057.pdf

¹⁴ *Id.*

¹⁵ FINRA Regulatory Notice 15-19, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Note_15-19.pdf

¹⁶ SR-FINRA-2015-057, available at, http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057.pdf

change. If the conversation is done in person, FINRA allows up to three business days for an advisor to send their client the educational communication.¹⁷ The educational communication does not need to be individualized for each client but can simply be provided in the general template form provided by FINRA. FSI believes that with this straightforward standard, firms will be able to easily create and implement policies, procedures and systems to comply with the rule.

C. FSI Applauds FINRA for Providing Clarity in Instances Where an Advisor's Firm is Acquired.

In its original proposal, FINRA was 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. In our previous comments, FSI recommended that FINRA consider whether instances such as acquisition would trigger delivery of the educational communication and requested that FINRA provide firms additional guidance. In its current proposal, FINRA has provided clarity in several contexts and specifically recognized this issue. In its analysis, FINRA determined that a situation where an advisor switches firms due to a merger does not present the same challenges on issues such as costs and differences in service.¹⁸ Therefore, FINRA has interpreted that this proposal would not apply in these situations where a client's "account is proposed to be transferred to a new member via bulk transfer or due to a change of broker-dealer of record."¹⁹

FSI agrees with FINRA's reasoning and applauds FINRA for making common sense substantive changes to its proposal.

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. FSI again commends FINRA for incorporating the industry's input into its current proposal.

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

¹⁷ SR-FINRA-2015-05, available at, http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057.pdf

¹⁸ *Id.*

¹⁹ *Id.*