***Via electronic mail at* rule-comments@sec.gov**

April 17, 2014

Mr. Kevin M. O'Neill
Office of the Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2014-010, Disclosure and Reporting Obligations Related to Recruitment Practices

Dear Mr. O'Neill:

The Financial Services Roundtable ("FSR")[1] respectfully submits these comments to the Securities and Exchange Commission ("Commission") concerning a request by the Financial Industry Regulatory Authority ("FINRA") that the Commission approve proposed FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices).[2]

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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 Securities and Exchange Commission, Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) ("Notice"), 79 Fed. Reg. 17592, 17593 (March 28, 2014).

Introduction

FSR applauds FINRA's efforts to provide investors with meaningful information regarding the financial incentives their registered representative ("Representatives") will receive when joining a new firm. FSR and its members support clear and concise disclosures that aid customers in understanding their accounts, their options and the activities of their firms and individual Representatives. However, we believe that aspects of the rule as proposed could be better crafted to maximize investor comprehension and encourage best practices by FINRA member firms and Representatives.

Under proposed Rule 2243, when a Representative or the Representative's new firm (the "Recruiting Firm") make "first individualized contact" with a client (a "Former Client") whose account is with the Representative's prior firm (the "Former Firm"), they would be 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 a Representative's new compensation amount and compensation arrangements.

The proposed rule recognizes that the process of transferring accounts when a Representative moves to a new firm can raise questions from customers. Indeed, transfers have been the subject of several FINRA rulemakings and policy statements.[3] FSR believes that FINRA should continue its strong tradition of protecting customer interests during this process. As outlined below, FSR urges the Commission not to approve the rule unless it is amended to address certain aspects of the proposed rule that we believe do not fully further the twin goals of investor comprehension and industry best practices. FSR believes that the following changes would enhance the proposed rule:

- The proposed rule should only require written disclosures, because written disclosure will aid the Former Clients' comprehension of complex information. By contrast, oral disclosures are redundant because written

[3] *E.g.*, FINRA Rule 11870 (establishing procedures for customer account transfers); FINRA Rule 2140 (prohibiting firms from interfering with account transfers in connection with representative's change of firm); FINRA Regulatory Notice 04-72 (concerning bulk transfers of variable annuities and mutual funds); FINRA Regulatory Notice 02-57 (concerning bulk transfers of customer accounts); FINRA publication "Understanding the Brokerage Account Transfer Process" *available at* http://www.finra.org/Investors/ProtectYourself/AfterYouInvest/UnderstandingBrokerageAccountTransferProcess/p085677.

disclosure must in any event be made. Oral disclosures also are burdensome for the Recruiting Firm and Representative in this context.

- Recruiting Firms should not be required to make disclosures about information uniquely in the possession of Former Firms, such as transfer fees and the lack of transferability of assets. The proposed rule should simply require Recruiting Firms to notify Former Clients to ask the Former Firm about such issues.

- Former Firms should be encouraged to make the following disclosures to the Representative's Former Clients, because the Former Firm still holds the Former Clients' accounts and owes duties to the Former Clients:

    - any costs to transfer assets imposed by the Former Firm (which we believe firms already disclose) and any issues with transferability of assets; and
    - if true, a general statement that the Former Firm offers financial incentives to its representatives to retain the Former Clients' accounts.

- The definition of compensation should include only remuneration related to brokerage products, which are within FINRA's regulatory purview.

FSR believes the above calibrations should encourage accurate disclosures, foster best practices and avoid unfairly disadvantaging the Recruiting Firm.

The Proposed Rule Should Only Require Written Disclosures.

FSR urges the Commission to forego any form of oral disclosure requirement in the proposed rule for several reasons. A better alternative would be to require a written disclosure and to permit follow-up oral conversations that are in keeping with the written statement or are otherwise accurate. In this way, the Recruiting Firm has greater control over content and distribution, and the Former Client has an opportunity to review and consider the entire disclosure before asking questions.

FSR believes that oral disclosures would contribute little to investor understanding and are burdensome in this context. First, due to the complexity of the information that would be communicated, a written format would make the information easier for customers to understand. It is clear that FINRA also does not believe oral disclosure in this context is as valuable as written disclosure: the proposed rule mandates written disclosure after oral disclosure. Since subsequent written disclosure must in any event be made, the final rule should just dispense with the oral disclosure requirement.

Second, oral disclosure presents practical difficulties. The Recruiting Firm and Representative may be delayed in contacting Former Clients because they do not have all

of the information needed for the disclosures, such as the fees associated with transferring the account or the portability of certain investments. Meanwhile, Former Firms may withhold information as part of their efforts to retain accounts. According to the Notice, FINRA "seeks neither to encourage nor discourage the practice [of offering recruitment compensation]." However, firms would be discouraged from offering recruitment compensation if the disclosure requirements of the final rule acted to delay Representatives' and Recruiting Firms' outreach to Former Clients, thereby diminishing their chances for success in bringing in Former Clients. More important, the effect of the oral disclosure requirement would be to inhibit, rather than augment, full and fair disclosure to Former Clients.

Third, FSR is concerned that the "first individualized contact" and "attempt to induce" standards in the proposed rule would be challenging for Recruiting Firms and Representatives to apply because the circumstances that would meet those standards are frequently difficult to discern and the proposed rule does not provide clarification. On the one hand, it might be argued that all outreach to Former Clients are attempts to induce account transfers. On the other hand, in using the definition, FINRA must mean to permit some kinds of communications without the disclosures. By way of example, it is unclear whether a Representative's telephone call to a Former Client to introduce the Recruiting Firm would constitute "first individualized contact" if the Representative were only to recite generic talking points about the Recruiting Firm. Another difficult situation to parse would be a "coffee and doughnuts" event organized by the Representative for a group of Former Clients. Does the number of people who attend make a difference? We can conceive of many other scenarios that raise the question of whether an attempt to induce account transfer has occurred.

In light of these concerns, FSR requests that the oral disclosure requirement be removed. Rather, the final rule should set a reasonable timeframe within which the written disclosures must be made available or sent to Former Clients, regardless of whether oral conversations take place. FSR notes that firms currently rely, quite successfully, on written disclosures to help customers understand critical information, such as trade confirmations and account statements, annual financial statements and privacy policies, and verification of suitability factors. Of course, as is the case with any written disclosures, oral conversations should also be permitted so that customer questions are answered.

For all of these reasons, FSR respectfully submits that the final rule should mandate only written disclosures.

Recruiting Firms Should Not Be Required To Make Disclosures About Information Uniquely In The Possession Of Former Firms.

Proposed Rule 2243 is not properly tailored to the circumstances it is intended to regulate—where two firms are separately interacting with the customer over the possible transfer of the customer's account. Rather, the proposed rule focuses on the Recruiting Firm, and would require it to disclose information that is uniquely in the possession of the Former Firm, which still holds the Former Client's account and is best positioned to say whether it will impose transfer fees on the account, or whether some of the assets would be non-transferable. We note that most firms already disclose information about transfer fees in their fee schedules, which are frequently posted on their web sites and made available to customers in other ways.

The reliance on the Recruiting Firm to provide information about the Former Firm's transfer fees or the non-transferability of assets is unlikely to further the proposed rule's very worthy objective of providing customers with relevant, accurate information that aids their decision making. The disclosures would be based on information that the Former Firm may be unwilling to confirm to the Recruiting Firm.[4] It is unclear why the proposed rule would require the Recruiting Firm, which has no authority to interpret or implement the Former Firm's policies concerning account transfers, to attempt to disclose terms and conditions of an account maintained at another broker-dealer.

In FSR's view, the Recruiting Firm should be required to make a general disclosure that the Former Firm may charge transfer fees and that certain assets may not be transferable. The disclosure also would indicate if the Recruiting Firm reimburses any such expenses or imposes any such fees itself. Finally, the disclosure would point Former Clients to the Former Firm for more information. This solution would also avoid the potential conflict between disclosure of a Former Client's assets and Regulation S-P, which is intended to prevent related disclosure by prohibiting firms from knowing a person's holdings at another firm and a Representative from bringing such information to the new firm.

FSR fully supports the presentation of accurate information that would assist Former Clients in comprehending their costs. We submit that the proposed rule should be amended to focus the disclosure obligations on costs and fee structures that are within the Recruiting Firm's power to determine.

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[4] Simply telling the recruiting firm and the representative that they may rely on the representative's memory, as is suggested in proposed supplementary material 2243.03 does not seem designed to inform or protect customers.

FINRA Should Encourage Certain Disclosures by Former Firms.

It seems to us that FINRA might take fuller advantage of the presence of two member firms in these situations. Thus, while the rule would mandate disclosures by the Recruiting Firm, FINRA might also establish a policy in the supplementary material to encourage Former Firms to make pertinent disclosures. Two primary disclosures seem appropriate under the circumstances: (i) disclosures about any transfer fees and non-transferability of assets, and (ii) if true, a general statement that the Former Firm offers financial incentives to its representatives to retain the Former Clients' accounts.

The first set of disclosures should not be controversial. As noted, Former Firms maintain the Former Clients' accounts. Certainly Former Firms already disclose the fact that they impose fees or that assets are non-transferable, so encouraging disclosure in connection with customer requests to transfer their accounts makes sense. Indeed, existing FINRA Rule 2140 (which prohibits Former Firms from interfering with customer transfer requests) further supports such disclosures. Finally, this sensible policy would foster accuracy in communications with Former Clients at a time when Former Firms are naturally communicating with the Representative's Former Clients.

The second set of disclosures also is designed to increase transparency and investor understanding. The Former Firm should have no hesitancy about making a generalized disclosure that it offers financial incentives to its representatives seeking to keep the Former Clients' accounts. The additional transparency enhances conflict of interest disclosure and helps alleviate a situation where Former Clients may be tempted to lay blame on one firm or the other.

Recruitment Compensation Should Only Include Remuneration From Securities and Brokerage Product Sales.

FSR appreciates that defining compensation for purposes of the proposed rule is a challenging exercise. FSR submits that remuneration that does not result from the sale of securities or brokerage products should be excluded from the definition of compensation.

In its definition of compensation, the proposed rule would require the inclusion of certain types of compensation that are unrelated to a Representative's broker-dealer activities. For example, certain broker-dealers with bank and/or insurance company affiliates may offer Representatives compensation related to the sale of non-securities insurance, deposit or loan products offered by those affiliates. These incentives do not relate to the sale of securities or the employee's activities for a broker-dealer. Similarly, the sale of investment advisory products, such as managed accounts, can be part of a Representative's remuneration, but are not a brokerage offering. These products are subject to alternative regulatory régimes outside the purview of FINRA. Accordingly, FSR believes that the definition of compensation in proposed Rule 2243 should be

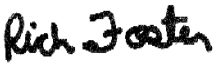
narrowed to include only compensation stemming from the sale of brokerage products, which are properly subject to regulation by FINRA.

Conclusion

In sum, FSR supports the objectives of proposed Rule 2243. Nevertheless, FSR respectfully requests that the Commission postpone approval of a final rule until the changes recommended in this letter are made and until FINRA has conducted additional analysis. FSR believes that further research of recruitment compensation practices would bring into focus the issues discussed in this letter. We welcome further dialogue with the Commission and FINRA on this topic.

FSR appreciates the opportunity to submit comments on FINRA's proposed rule. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact Richard.Foster@FSRoundtable.org.

Sincerely Yours,



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

Financial Services Roundtable