UBS

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By Electronic Mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **File Number SR-FINRA-2014-010; Release No. 34-71786**
UBS Financial Services Inc. Comment on FINRA Proposed Rule 2243 ("Proposal")
Disclosure and Reporting Obligations Related to Recruitment Practices

Dear Ms. Murphy:

UBS Financial Services Inc. ("UBS") submits this letter in response to the SEC's request for comment on the above-captioned rule proposal.[1] For the reasons discussed below, UBS strongly supports the concept of an industry-wide standard for disclosure of incentives relating to the recruitment of retail brokers. However, UBS also believes that certain changes to the proposal would make it more effective and more efficient to administer.

A. UBS Supports Disclosure of Recruiting Compensation Incentives

UBS believes the concept behind FINRA's proposal is sound. When a retail broker moves from one broker-dealer to another, that broker's customers are likely to be interested in the products and services offered by the two firms and the costs of those products and services. Customers may not be aware that in some cases the broker has received financial incentives to make such a move. UBS agrees with the Supreme Court's wisdom, expressed over 50 years ago, that the fundamental purpose of the securities laws is "to substitute a philosophy of disclosure for the philosophy of caveat emptor, and thus to achieve a high standard of business

[1] UBS Financial Services Inc. is dually registered as a broker-dealer and an investment adviser. We have a preeminent practice serving the needs of ultra high net worth and high net worth individuals and families. We employ approximately 16,000 people in the United States, and are one of the largest securities firms in the United States. Our parent company, UBS AG, is one of the premier wealth management firms in the world. With offices in more than 50 countries, it has a 150-year heritage serving private, institutional and corporate clients worldwide. Our primary mission is to provide advice-based solutions to our clients through professional advisers who are fully dedicated to helping clients meet their investment and broader wealth management objectives. Our more than 7,000 financial advisers are among the best in the industry-with average invested assets per adviser of $136 million.

ethics in the securities industry."[2] Information about the compensation practices of different broker-dealers may be difficult for customers to find, and information about recruitment compensation incentives typically is not publicly available. [3] We do not believe it is fair to require customers to have to ask for that information affirmatively from their broker when the broker changes firms – especially since many customers do not even know that they should ask for this information. Brokers and their new firms should affirmatively disclose that information to customers, at least where the compensation incentives are materially different at the new firm from those at the former firm. For these reasons, UBS submitted a comment letter on March 5, 2013, in support of FINRA's basic proposal to require disclosure of broker recruiting compensation incentives, and UBS is pleased to reiterate that support today.

B. UBS Believes the Proposal Should Be Made More Efficient and Effective

While UBS supports the proposal, we believe it should be streamlined to make it more effective and easier to administer and supervise. We have suggestions below about the calculations required, and the timing and substance of the disclosures.

1. The Compensation Disclosures to Customers and to FINRA Should Be Harmonized

As currently proposed, a broker-dealer would be required to make three different compensation calculations to implement the proposed rule: the amount of any "up-front" compensation incentives (such as signing bonuses or transition assistance), the amount of any deferred compensation incentive (such as an enhanced payout grid for the broker's first year), and then the greater of 25% of the broker's compensation or the sum of the broker's up-front and deferred compensation, to determine if a separate disclosure to FINRA concerning the broker's incentives is necessary. UBS concurs with the concept that FINRA should know about broker compensation incentives, so that it can appropriately examine broker conduct. However, we believe that FINRA's interest in examinations is fundamentally not different in kind from a customer's interest in understanding a broker's incentives. In either case, if the broker has new incentives that are material and not de minimis, then those interests should be disclosed. We do not believe that the additional cost of complexity of having these multiple different calculations is justified.

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[2] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,186 (1963).

[3] UBS has long voluntarily made available on its website an industry-leading set of customer disclosures about compensation, including both firm-level compensation and broker compensation. See UBS, Understanding our fees, charges and other compensation (available at https://onlineservices.ubs.com/staticfiles/olspages/adobe/InformationAboutYourRelationshipWithUs.pdf).

Moreover, the current compensation calculations would lead to inconsistent and perverse results. Because of the different calculations and the different de minimis exceptions, some brokers will trigger the client compensation disclosure but not FINRA disclosure, and others will trigger FINRA but not client disclosure. For example, a broker who earns $250,000 per year and who gets $75,000 in up-front transition assistance and a $75,000 end-of-year bonus if she meets production targets, will trigger FINRA disclosure (more than $100,000 in total incentives) but not client disclosure (neither $100,000 up front, nor $100,000 deferred).[4] By contrast, a broker who makes $1 million and who gets a $100,000 up-front bonus and a $100,000 end-of-year incentive will trigger client disclosure (both over $100,000 up-front and deferred), but not FINRA disclosure (less than 25% total compensation increase).[5] These calculations are simply more complicated, and more difficult to implement and supervise, than they need to be. UBS urges that FINRA simply adopt the same compensation triggers and de minimis exceptions for disclosure both to clients and to FINRA.

2. **As Currently Drafted, the Product Disclosure Would Be Difficult if Not Impossible to Administer**

Under Regulation S-P, a departing broker is not permitted to bring with him or her information about the positions of the broker's customers at the former firm. That information is treated as the confidential information of the broker's former firm (and of the customers). Yet the proposed rule would require the departing broker, in his or her first oral conversation with each former customer, to disclose whether the customer has any positions that could not be transferred to the new brokerage system, or that would be potentially subject to transfer fees or other costs. There is no effective way for brokers to make accurate disclosure about these issues before they have complete information about what each customer's positions actually are. Nor will the receiving broker-dealer be in any position to supervise whether these required oral disclosures are accurate and complete. Most brokers have customers with very different positions; some of those customer accounts may include proprietary products that are subject to transfer restrictions, but many accounts will not. If the proposed product-level disclosure is to be effective, FINRA must postpone it until after the customer has given permission for the broker to obtain complete position-level information from the former firm.

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[4] We note that in our March 5, 2013 comment letter, UBS supported lower disclosure thresholds than those now proposed by FINRA. Once again, we emphasize that UBS is not opposed to disclosure; we simply want the disclosure to be consistent and effective.

[5] We also note that the deferred compensation disclosure would require the receiving broker to have accurate information about the compensation practices about the broker's former firm, which it is not clear it would always have. We urge FINRA to recognize a "reasonable efforts" standard for obtaining this information. While UBS utilizes standard commission grids for its brokers, we are not sure how the deferred compensation calculations could be made for smaller firms in which every broker has individually negotiated compensation grids.

In addition, almost every broker-dealer has proprietary money market funds or bank sweep products that generally are not transferrable to another firm. However, in our experience, the fact that those cash sweep options are not transferrable and may need to be liquidated is not a material consideration for customers. These products typically are priced at a stable NAV of $1 per share, and are designed to be easy to liquidate. The receiving broker-dealer will have cash sweep options that are near equivalents of the former firm's products. We urge FINRA to exempt cash sweep products from the product-level disclosure. It is important that customers receive information that is actually material to their decision, and that customers not be distracted by disclosures about immaterial differences in product offerings.

3. The Rule Should Mandate Written Disclosure, Not Oral Disclosure

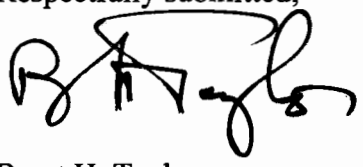
As discussed above, UBS believes the product-level oral disclosure as currently proposed would be difficult if not impossible to administer, because the broker (and his or her new broker-dealer) would not have all of the position-level information necessary to make those disclosures at the time of the first oral contact. Even for the compensation disclosures, we believe it would be strongly preferable to require written disclosure instead of the oral disclosure (rather than in addition to the oral disclosure, as currently proposed).[6] It is very difficult for a broker-dealer to supervise oral disclosures, especially for an employee who is just starting work at a new firm. We believe written disclosure is preferable in any event – it gives the customer (who is unlikely to be familiar with broker compensation practices) more opportunity to reflect upon and understand the disclosure, and then follow up with questions, if any. Moreover, written disclosure creates a verifiable record that the disclosure was made (and made correctly) for supervision and compliance purposes. In any event, the customer is unable to initiate an account transfer without receiving and signing written account documents – it makes sense to provide a written disclosure at the time the broker is requesting the customer sign those forms. UBS believes a written compensation disclosure is both more effective as a communication tool, and more efficient as a supervisory matter, than an oral disclosure would be.

[6] We note that in response to FINRA's original proposal, UBS commented that written disclosures would be more effective than oral disclosures.

Conclusion

For the reasons discussed above, UBS strongly supports the concept of a mandatory, uniform industry-wide disclosure concerning broker recruitment compensation. Where compensation recruiting incentives are material, customers deserve to know about them, so customers can make a reasoned decision whether to follow a broker to a new firm. However, UBS also believes that the current proposal is more complicated to administer and supervise than is necessary. With the suggestions we have made above, we believe FINRA's proposal will be more efficient and effective and should be approved by the Commission.

Respectfully submitted,



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