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April 17, 2014

Via internet comment form to http://www.sec.gov/rules/sro.html

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

Re: File No. SR-FINRA-2014-010 --- Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices).

Dear Ms. Murphy:

Wells Fargo Advisors, LLC ("WFA" or "the Firm") appreciates the opportunity to provide this letter in response to Financial Industry Regulatory Authority ("FINRA") file number SR-FINRA-2014-010, which proposes a rule to require disclosure and reporting by FINRA member firms of financial incentives a recruited representative will receive as part of a recruited representative's relationship with the new firm (the "Proposed Rule").[1] Under the Proposed Rule, recruiting firms would be required to disclose, at the first individualized contact with a recruited representative's former customers, aggregate upfront or aggregate potential future payments of $100,000 or more.[2] Disclosures must also describe the basis for the recruitment payments and note any costs, fees or product limitations associated with moving to the new firm.[3] In addition, the proposal would require firms to report to FINRA if a representative's compensation is reasonably expected to increase by the greater of 25% or $100,000 over the

[1] FINRA File No. SR-FINRA-2014-010 – Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices, 6-7, http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p458588.pdf
[2] *Id.* at 8.
[3] *Id.* at 9.

prior year.[4] WFA writes to reiterate its support for a well-designed compensation disclosure rule and to offer recommendations to improve efficiency of compliance with the final rule.[5]

WFA consists of brokerage operations that administer approximately $1.4 trillion in client assets. It employs approximately 15,414 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in retail bank branches across the country.[6]

WFA shares FINRA's view that former customers of a recruited representative would benefit from knowing such information as the "magnitude" of recruitment incentives their representative receives.[7] WFA publicly supported FINRA's original disclosure proposal. In addition, WFA applauds FINRA for responding to commenters and providing a model recruitment compensation disclosure form to help assure that disclosures are "clear and prominent" and consistent across the industry while allowing firms the flexibility to design their own disclosures.[8]

As a supporter of disclosure, WFA believes any final rule should be premised on clear, plain English disclosure of potential conflicts coupled with a method for efficient and verifiable compliance. Consequently, WFA is taking this opportunity to recommend a simpler, more efficient disclosure process that provides customers with appropriate information to make an informed decision while facilitating effective customer service. In addition, WFA requests that FINRA provide additional guidance regarding certain disclosure and reporting requirements. Finally, WFA believes customers should receive meaningful disclosures regardless of the business model of their representative. WFA discusses each of these recommendations in more detail below.

I. The Final Rule Should Mitigate Operational Complexity.

FINRA's Proposed Rule would require the recruiting firm to provide former customers with disclosures at the "first individualized contact" during which the recruiting firm or recruited representative "attempts to induce the former customer to transfer assets to the member."[9] If first contact with the customers is oral, the member must give oral disclosures followed by written disclosures within 10 business days of the oral contact or with account transfer paperwork, whichever is sooner.[10]

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[4] *Id.* at 16.
[5] Robert T. Mooney letter responding to FINRA Regulatory Notice 13-02—Request for Comment on Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p220097.pdf.
[6] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 78 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.
[7] Proposed Rule Change at 6-7.
[8] *Id.* at 14-15.
[9] Proposed Rule Change at 13.
[10] *Id*.

WFA previously expressed its concern that oral disclosures are difficult to supervise, unduly burdensome and could lead to delays in customer service.[11] FINRA responded to these and other comments opposing the oral disclosure requirement by noting that firms already supervise representatives' communications with customers and have flexibility to design their supervisory systems.[12] Furthermore, FINRA believes that the administrative burden to firms of tracking oral disclosures does not outweigh the benefits of providing disclosures at first contact whether written or oral.[13]

WFA submits that FINRA's position understates the practical difficulty and administrative burden that proper supervision and appropriate documentation of oral disclosures would represent to members, while overstating the benefit to former customers. The Proposed Rule would require firms to redesign their supervisory systems to monitor the content of oral disclosures. Regulatory disclosures are traditionally delivered in a written format to facilitate verifiable evidence of compliance that eliminates ambiguity as to the information provided and the timing of disclosure. Furthermore, an oral disclosure requirement creates redundancy as clients contacted orally would still receive written disclosures within 10 days or with account transfer paperwork.

Accordingly, WFA strongly recommends that the final rule should require recruiting firms to provide clear and prominent written disclosures that accompany or precede account transfer paperwork for former customers of the recruited representative. These revisions would balance FINRA's purpose of providing disclosures prior to a customer's transfer with members' interest in efficient compliance and effective customer service.

The Proposed Rule would also require firms to disclose if transferring assets to the recruiting firm will result in unreimbursed expenses.[14] In addition, if any of the assets are not transferrable, disclosures should note that the former customer may incur costs including taxes if they elect to liquidate and transfer to the recruiting firm, or may incur inactivity fees by leaving assets at the current firm.[15] Firms may rely on the "reasonable representations" of the recruited representative "supplemented by the actual knowledge of the member" in determining whether to make these disclosures.[16] WFA generally reimburses transfer costs to its customers. However, WFA notes that recruiting firms and recruited representatives are not in position to know with any specificity whether a former customer will incur liquidation, taxes or other costs. Accordingly, WFA believes disclosures should simply direct the former customer to contact the current firm for information about the transferability and portability of assets.

In addition, the Proposed Rule establishes separate thresholds for purposes of disclosure and reporting. Firms would be required to make separate disclosures for upfront and potential future

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[11] Robert T. Mooney letter responding to FINRA Regulatory Notice 13-02 at 3-4.
[12] Proposed Rule Change at 55.
[13] *Id*.
[14] *Id*. at 15.
[15] *Id*.
[16] *Id*. at 11.

payments of $100,000 or more.[17] Reporting obligations would be triggered "if the member reasonably expects" the representative's first year compensation to increase over the prior year by the greater of 25% or $100,000.[18] The disparity between the determination of disclosure and reporting obligations adds unnecessary complexity to the Proposed Rule's operation. WFA therefore requests that FINRA adopt a uniform threshold for determining both disclosure and reporting obligations.

II. FINRA Should Address the Fair Dealing Obligations of Former Firms Paying Customer Retention Bonuses.

WFA has previously expressed its belief that FINRA should address the fair dealing obligations of former firms seeking to retain former customer of a recruited representative.[19] In response, FINRA asserts that incentives "offered while the representative is situated at a firm do not implicate the same considerations, such as transfer costs and portability."[20]

WFA respectfully disagrees. For example, the presence of retention incentives could motivate a representative at the former firm to suggest that transfer costs will be incurred without disclosing that the recruited firm may reimburse some or all transfer costs. In addition, such incentives could motivate a representative to suggest issues of portability when they may not be present.

According to FINRA, recruitment disclosures are designed to provide "a more complete picture of the factors relevant to a decision to transfer assets to a new firm" and to facilitate conversations with the recruiting firm or recruited representative about "areas of personal concern." [21] WFA believes the same objectives should apply with respect to the conduct of former firms paying incentives to retain former customers. Accordingly, FINRA should address the fair dealing obligations of former firms as part of the final rule.

III. FINRA Should Provide Guidance to Clarify the Operation of the Rule.

WFA notes that the Proposed Rule contains several provisions which require elaboration to ensure consistent observation across member firms. Accordingly, WFA requests that FINRA provide guidance to clarify permissible content in the disclosure comment field, permissible direct costs for netting purposes, and addressing the disclosure and reporting process for recruitment compensation paid to recruited teams of representatives.

a. Guidance on Permitted Content for the Comments Field of the Disclosure Template.

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[17] *Id*. at 8-9.
[18] *Id*. at 16.
[19] Robert T. Mooney letter responding to FINRA Regulatory Notice 13-02 at 4.
[20] Proposed Rule Change at 52.
[21] *Id*. at 6.

FINRA's model Recruitment Disclosure Form provides an optional comment section in which firms could "include additional contextual information" that is not "false or misleading."[22] WFA believes that FINRA should provide additional guidance on permitted information in this field. For example, WFA believes a firm should be permitted to explain that a representative's recruitment compensation will be paid in installments over a period of years and to show the amount of such installment payments.

b. Guidance Clarifying Permissible Direct Costs for Netting Purposes.

In describing the process for calculating compensation, FINRA permits recruiting firms to "net out any increased costs incurred directly by the representative in connection with transferring to the member."[23] It does not elaborate or provide examples of permissible direct costs for netting purposes. For example, could a recruited representative net out the cost of paying off an existing loan at the former firm with the proceeds of the recruitment bonus at the recruiting firm?

c. Guidance Clarifying Disclosure and Reporting Process for Recruitment of Teams.

FINRA's Proposed Rule does not address the implications of recruitment compensation paid to teams of representatives. For example, FINRA should address whether a firm may prorate the portion of the team's recruitment compensation attributable to each team member in the determination of disclosure and reporting requirements. In addition, guidance should address the scenario in which members of a recruited team have staggered hiring dates to avoid having the same clients receive the same disclosure multiple times.

IV. FINRA Should Work with the SEC to Assure RIAs Have a Similar Recruitment Disclosure Duty to Retail Customers.

In its letter responding to FINRA's original Notice to Members outlining a potential recruitment compensation rule, WFA suggested that FINRA should work with the Securities and Exchange Committee ("SEC" or "the Commission") and the states to assure that retail customers of RIAs receive comparable recruitment compensation disclosures to those envisioned by FINRA for its member firms.[24] In its response to comments, FINRA took note of this concern but explained that RIAs are subject to SEC oversight and "a disclosure regime established by the Form ADV."[25]

Although Form ADV Part 2B obliges RIAs to disclose "Additional Compensation," such as recruitment compensation, it permits RIAs to "generally describe the arrangement."[26]

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[22] *Id*. at 16.
[23] *Id*. at 18.
[24] Robert T. Mooney letter responding to FINRA Regulatory Notice 13-02 at 2-3.
[25] Proposed Rule Change at 44.
[26] Form ADV Uniform Application for Investment Adviser Registration, Part 2B of Form ADV: Brochure Supplement, Item 5

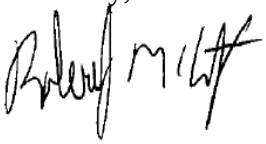
As a consequence, a registered representative considering recruitment compensation offers from both a FINRA member firm and a non-member RIA may avoid detailed disclosure by associating with the RIA.

The Proposed Rule may therefore incentivize representatives who are considering leaving their current firm to favor employment with RIAs which are not subject to FINRA oversight. Moreover, the Proposed Rule's application only to FINRA members would mean former customers of recruited representatives that associate with non-member RIAs may not receive appropriate disclosures of conflicts of interest, undermining FINRA's purpose of providing former customers detailed notice of enhanced compensation. Accordingly, WFA respectfully reiterates its request that FINRA work in concert with the SEC to assure that RIAs are subject to substantially similar disclosure requirements for retail customers.

Conclusion

WFA reiterates its support for FINRA's objective of informing customers of potential conflicts of interest presented by recruitment compensation. WFA believes the foregoing comments would advance this purpose while facilitating more effective compliance with a final rule. Please feel free to contact me with any questions or comments.

Sincerely,



Robert J. McCarthy
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Wells Fargo Advisors

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http://www.sec.gov/about/forms/formadv-part2.pdf