



April 17, 2014

By Electronic Mail to rule-comments@sec.gov

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

Re: **File Number SR-FINRA-2014-010; Release No. 34-71786**
SIFMA comment on FINRA Proposed Rule Change re Rule 2243 (the “Proposal”)
Disclosure and Reporting Obligations Related to Recruitment Practices

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the proposal by the Financial Industry Regulatory Authority (“FINRA”) to adopt FINRA Rule 2243, Disclosure and Reporting Obligations Related to Recruitment Practices. SIFMA supports the underlying goal of the Proposal – to foster investor protection by requiring broker-dealers to disclose certain potential conflicts of interest that may arise in connection with a registered representative’s receipt of recruiting related bonus payments.

As SIFMA stated in its comment letter on FINRA Regulatory Notice 13-02,² SIFMA has a long standing public record of supporting plain English disclosure to investors of material terms and potential material conflicts of interest at pivotal points in the investment process. SIFMA appreciates FINRA’s efforts on the important issue of investor disclosures.

SIFMA’s comments on the Proposal focus on various operational challenges that SIFMA believes have not been fully considered and may adversely impact firms’ ability to efficiently and cost effectively implement the Proposal.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”). More information about SIFMA is available at <http://www.sifma.org>.

² See SIFMA Comment Letter on FINRA Regulatory Notice 13-02 at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p220092.pdf> [last visited on April 15, 2014].

I. INTRODUCTION

SIFMA appreciates FINRA's efforts to obtain input from its member firms regarding the proposal in Regulatory Notice 13-02. Several revisions included in the Proposal respond to prior industry comments and provide valuable feedback to the industry, including:

- Changing the threshold amounts that trigger application of FINRA Rule 2243;
- Moving away from the requirement to disclose granular personal financial information; and
- Permitting firms to use either a FINRA created model disclosure document or a firm generated disclosure document.

However, operational challenges remain in the Proposal and revisions are necessary in order for any final rule to be operationally feasible and effective.

II. OVERVIEW OF THE PROPOSAL

FINRA's Proposal includes two main components: (i) disclosure obligations and (ii) reporting requirements. The disclosure obligations under the current Proposal require a member firm that associates with a registered representative and attempts to induce a former customer of that representative to transfer assets to the new member firm to disclose to the former customer if the representative has received (or will receive) \$100,000 or more of aggregate upfront payments or aggregate potential future payments in connection with transferring to the new member firm. Upfront payments are defined to include, among other things, cash payments, deferred cash bonuses, forgivable loans, loan-bonus arrangements, and transition assistance. Potential future payments is defined to include, among other things, payments offered as a financial incentive to recruit the registered person to a member that are contingent on satisfying performance-based criteria.

In addition to the recruitment compensation disclosure, the Proposal requires that the member firm disclose to a former customer of the representative if transferring the former customer's assets to the member: (1) will result in costs to the former customer, and (2) if any of the former customer's assets are not transferable to the member firm, or that the former customer may incur costs to liquidate and transfer those assets in their current form to the member or incur inactivity fees to leave those assets with the former customer's current firm.

Under the reporting requirements of the Proposal, member firms are required to report to FINRA significant increases in total compensation (an actual or expected increase of 25% or \$100,000 over the prior year's compensation) paid to a newly recruited representative during the first year. In determining total compensation, a member firm must include any aggregated upfront payments, aggregated potential future payments, increased payout percentages or other compensation the member reasonably expects to pay the registered person during the first year of employment or association with the member.

III. SIFMA SUPPORTS DISCLOSURE OF POTENTIAL MATERIAL CONFLICTS OF INTEREST

SIFMA supports disclosures that inform investors of the potential material conflicts of interest that may arise in connection with recruiting related compensation and of the consequences of transferring assets to a new firm. As SIFMA has stated previously, SIFMA believes that at key moments in the investment process, investors need clear, targeted and understandable disclosure on significant factors for their investment decisions. Simple, plain-English disclosures permit investors to make informed choices and can foster strong and vibrant securities markets.

IV. FINRA SHOULD ADDRESS OPERATIONAL CHALLENGES ASSOCIATED WITH THE PROPOSAL

SIFMA believes that the Proposal raises various operational challenges that should be addressed by FINRA. SIFMA looks forward to continuing to work with SEC and FINRA staff to ensure that any final rule is simple and can be operationally implemented.

A. The Timing of Disclosure Should Maximize Effectiveness

Effective disclosure has a lot to do with timing. SIFMA believes in effective disclosure at *key* moments in the investment process. The Proposal's requirement that written disclosures be sent within 10 business days from oral contact presents potentially significant operational challenges and may not serve to deliver information when investors need it.

Firms will face significant challenges creating a supervisory system that will be reasonably designed to monitor the fluid and dynamic oral communications between representatives and customers. For example, there are potential challenges associated with pinpointing the exact date when a communication may morph into a solicitation to transfer assets. The challenge is enhanced by the fact that these communications may occur prior to the representative joining the new member firm. Indeed, forms may reach investors that may have already expressed a desire to remain with the current member firm – thereby creating needless confusion rather than providing useful information.

B. Access to Customer Information

The information related to a former customer's assets remains with a transferring representative's prior firm. After transferring to a new firm, a representative may no longer have contact or otherwise interact with the representative's previous firm. In addition, the previous firm might have regulatory and/or contractual limitations on sharing customer information with third-parties. The new employing member firm, therefore, may not have access to the customer information required under the Proposal. Without such information, a member firm cannot conduct the analysis required to discern potential costs or analyze the transferability restraints, if any. The Proposal should account for these and other operational difficulties, and be implemented in a way that is practical in its application.

C. Reporting Obligations Under the Proposal Should be More Narrowly Tailored & Aligned with the Other Conditions of the Proposal

Under the Proposal, member firms are required to report to FINRA expected increases in total compensation, by the greater of 25% or \$100,000, to be paid during the first year to a new representative who brings former customers to the member firm. SIFMA believes that FINRA should consider if it has access to the information required under the Proposal's reporting requirements pursuant to other pre-existing FINRA information collection processes. Member firms are already subject to extensive information collection requests and FINRA should leverage those pre-existing systems prior to imposing yet another information reporting obligation on member firms.

SIFMA believes that if a reporting obligation is included in the Proposal, it should be more narrowly tailored to have a direct nexus to the disclosure requirements of the rule and the conflicts of interest associated with paying recruitment compensation and transferring former customer accounts to a new member.

SIFMA also requests an opportunity to comment on the timing and manner of reporting proposed by FINRA so that SIFMA can more fully consider this issue and dialogue around effective implementation.

D. The Goals in the Proposal are Best Served with Enhanced Analysis of Economic Impact

SIFMA encourages dialogue about the economic impact of implementing the reporting requirements under the Proposal. The Proposal includes new disclosure and reporting requirements (requirements that differ from those included in Regulatory Notice 13-02) that directly implicate firms' information collection and retention processes, supervisory systems, and other back-office functions. Creating or updating systems to capture, analyze, and report the required information might involve extensive cost as well as resource allocation/reallocation.

Implementation of the Proposal would be greatly enhanced by further analysis of FINRA's statement that "FINRA does not believe that the proposed rule change will impose undue operational costs on members to comply with the disclosure and reporting obligations...."³ SIFMA is unaware of the basis and analysis supporting this conclusion. Analysis of the economic impact to investors, the securities markets, and investment professionals is necessary to the success of the Proposal.

³ See 79 Fed. Reg. 17592, 17597 (Mar. 28, 2014).

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V. CONCLUSION

SIFMA has consistently supported meaningful disclosures of potential material conflicts of interest. SIFMA reiterates its support for concise, direct and plain English disclosure of information that is sufficient to inform an investor of the potential material conflicts of interest that may arise in connection with recruiting related bonus payments.

SIFMA believes that the Proposal presents various operational challenges that should be more fully considered before the Proposal results in a final rule because those operational challenges impact whether firms can practically and cost effectively implement the Proposal. SIFMA has formed an industry working group that stands ready to work with SEC and FINRA staff to ensure that any final rule is simple, effective, and operationally implementable.

SIFMA thanks the SEC and FINRA staffs for their willingness to consider the issues raised in this comment letter. If you have any questions or require further information, please contact Kevin Zambrowicz, Associate General Counsel & Managing Director, SIFMA, at ([REDACTED] [REDACTED]), or our outside counsel Marlon Paz at ([REDACTED] [REDACTED])

Very truly yours,



Ira D. Hammerman
Executive Vice President and
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cc: Robert Colby, Chief Legal Officer, FINRA
Marlon Paz, Locke Lord