

# Morgan Stanley

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Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Re: File Number SR-FINRA-2014-010**  
**FINRA Proposed Rule Change to Adopt Rule 2243**  
**Disclosure and Reporting Obligations Related to Recruitment Practices**

Dear Ms. Murphy:

Morgan Stanley Wealth Management (“Morgan Stanley” or the “Firm”) appreciates the opportunity to comment on the referenced rule proposal (the “Rule Proposal”) from the Financial Industry Regulatory Authority, Inc. (“FINRA”) to adopt FINRA Rule 2243. Morgan Stanley supports the uniform disclosure of firms’ recruiting compensation arrangements as outlined in the Rule Proposal, and commends FINRA for striking the right balance by providing clients with meaningful disclosure of an advisor’s recruitment compensation package without restricting legitimate compensation practices. Morgan Stanley also highlights two areas where FINRA should be sensitive to unintended operational and legal challenges.

## INTRODUCTION

Morgan Stanley is a preeminent wealth management firm and is one of the largest securities firms in the United States. Our financial advisors are critical to developing strong client relationships, which are our most valuable assets. As such, attracting and retaining exceptional advisors for our clients is a paramount objective of the Firm. To recruit the most talented financial advisors, Morgan Stanley must offer competitive compensation packages, which include financial incentives. As FINRA points out, recruiting incentives offered to seasoned financial advisors may amount to a multiple of the commissions and fees earned by the advisor at the prior firm, and may include compensation linked to the amount of client assets transferred from the advisor’s prior firm to the new firm, or incentives based upon the advisor’s production at the new firm.

A uniform regimen for disclosing an advisor’s recruitment compensation package will allow clients to weigh and consider their advisor’s interests in switching to a new firm and how moving

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their accounts to the new firm may affect their own interests. A uniformly applied standard that requires specific, "clear and prominent" disclosure of the amount, timing, and nature of the financial incentives the advisor has received and may be eligible to receive will promote investor confidence and a clearer dialogue about the reasons to change firms. By contrast, a rule permitting a non-specific, generic disclosure of an advisor's recruitment compensation package would perpetuate inconsistent disclosure practices amongst firms, resulting in some clients' receiving less meaningful information and undermining FINRA's stated objectives.

### **ALL BENEFIT FROM UNIFORM DISCLOSURE AND TRANSPARENCY**

The Rule Proposal correctly does not limit the amount of recruiting compensation firms pay, or the type or nature of that compensation. FINRA is appropriately focused where it should be, on uniform disclosure and transparency to enable clients to make informed investment decisions and to enhance investor trust and confidence in our industry and our registered representatives.

A client's decision to change firms is an important one and may involve balancing the benefits of transferring an account against any disadvantages. While some clients no doubt will deem recruitment compensation irrelevant to their decision to change firms, other clients may want to understand and evaluate the financial impact to both themselves and their adviser. The Rule Proposal allows clients themselves to judge whether the amount, nature and timing of this enhanced compensation creates any material conflict of interest. Providing clients with this detailed information enables clients to discuss meaningfully the pros, cons and potential financial impact to both the client and their representative of transferring the client's account, with confidence that they understand what their advisor may gain from their transition.

### **MORGAN STANLEY SUPPORTS USE OF A UNIFORM DISCLOSURE TEMPLATE PROVIDING UNIFORM AND MEANINGFUL DISCLOSURE OF ENHANCED COMPENSATION**

Morgan Stanley supports the proposed uniform disclosure template (the "Recruitment Disclosure Form"), which members firms must use unless they create a disclosure form of their own that provides the same information contained on the Recruitment Disclosure Form. Lack of uniformity risks fostering a competitive landscape in which firms employ different disclosure practices and advisors may favor relocation to the firm with the most opaque disclosure requirements. It is not only in the client's best interest, but is also fairest to all recruits and member firms, if firms are required to disclose to clients the same information in a uniform format. We believe this uniform template will enhance consistency and minimize questions about the required level of detail and the form of disclosure.

The Rule Proposal requires disclosure in different categories of recruitment compensation - aggregate guaranteed upfront payments and aggregate potential future payments based on

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achieving certain performance-based criteria such as a minimum amount of client assets under the advisor's management or a minimum amount of production generated by the advisor. Rather than requiring disclosure of the specific dollar amounts, however, the Rule Proposal requires disclosures to be made in certain ranges. In its prior comment letter to FINRA, Morgan Stanley acknowledged that the disclosure of specific compensation information is a sensitive matter and that many financial advisors understandably prefer greater privacy when it comes to compensation matters. In our view, the use of ranges, as opposed to specific dollar amounts, reasonably addresses these potential privacy concerns. Also, by raising the reporting threshold to \$100,000, the Rule Proposal has addressed concerns about smaller financial incentives that may not create the prospect of a conflict of interest. The Recruitment Disclosure Form, with check boxes and dollar ranges, also avoids the operational complexity of the specific disclosure regime originally proposed.

The Recruitment Disclosure Form will simplify the disclosure process for firms by helping to avoid ambiguities in interpreting the Rule Proposal's requirements, and it will ensure that clients receive a meaningful and consistent level of detail from all firms.

### **CLIENT SPECIFIC DISCLOSURE REGARDING COSTS TO TRANSFER ASSETS AND TRANSFERABILITY RESTRAINTS CREATES SIGNICANT OPERATIONAL CHALLENGES BECAUSE THE NEW FIRM DOES NOT HAVE ACCESS TO ALL RELEVANT INFORMATION**

The Rule Proposal requires specific disclosure if transferring the client's assets to the new firm will result in costs to the client (e.g., account termination or account transfer fees). The Proposal also requires specific disclosure to the client if any of the client's assets are not transferable from the advisor's former firm to the new firm, or if the client will incur costs to liquidate and transfer those assets to the new firm. Morgan Stanley fully supports FINRA's desire to place clients on notice of costs and transferability constraints. However, these disclosure requirements raise operational challenges.

A financial advisor's new firm will lack access to account information regarding a client's accounts at another firm in order to conduct the analysis required to determine potential costs or analyze restraints on transferring assets to the new firm. The new firm is simply not positioned to provide an accurate client specific disclosure as contemplated by the Rule Proposal. Rather than require a customized disclosure to each client, the Rule Proposal should require a "clear and prominent" general disclosure informing clients that transferring assets to the new firm *may* result in costs to the client, and certain assets *may* not be transferable to the new firm, and the client *may* incur costs to liquidate and transfer assets to the new firm. A customized disclosure obligation with regard to costs to transfer assets and transferability restraints would be difficult if not impossible to implement since firms would likely not have access to the information required under the Rule Proposal. In our view, alerting the prospective client to the fact that there may be costs associated with a transfer and that certain assets may not be transferrable will provide clients

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with adequate notice so that clients can inquire further about these issues without presenting the operational challenges associated with forcing the new firm to advise on client specific information that it cannot evaluate accurately without full transparency into the client's holdings.

**FINRA SHOULD CLARIFY THAT THE RULE PROPOSAL REGARDING INDIVIDUALIZED CONTACT WITH FORMER CLIENTS IS NOT INTENDED TO IMPACT A FINANCIAL ADVISOR'S RIGHTS OR OBLIGATIONS UNDER RESTRICTIVE COVENANTS WITH A FORMER FIRM**

Under the Rule Proposal, FINRA would consider any individualized contact by a financial advisor of a former client to be an attempt to induce the former client to transfer assets to the advisor's new firm, thereby triggering the disclosure obligation. In our view, without further clarification, this aspect of the Rule Proposal has potential for unintended legal consequences, specifically, that compliance with the required disclosures in Rule Proposal may be cited in recruiting litigation as evidence that an advisor making an "announcement" of his new affiliation to a former client has engaged in a "solicitation" in violation of a restrictive covenant. This was not the intended purpose of the Rule Proposal, and can be easily remedied with a statement clarifying that the Rule Proposal only governs disclosure obligations, and is not intended to be used for other purposes, including determining when and if a client has been solicited. Courts and arbitration panels are charged with making fact-specific determinations and contractual interpretations regarding these issues. FINRA's statement relating to this specific proposed rule may be incorrectly interpreted by some to supplant such inquiries. We believe FINRA should affirmatively state that this aspect of the Rule Proposal should not be interpreted as such, and is limited to setting forth the conditions upon which the client disclosure obligation arises.

### CONCLUSION

Clients, financial advisors, and the industry all benefit from uniform disclosure and transparency of enhanced compensation information. The Rule Proposal will serve to enhance consistency and minimize open questions about the required level of detail and the form of disclosure. For all of these reasons, Morgan Stanley supports the Rule Proposal, and urges FINRA to implement the Rule Proposal, with the changes as described above. Morgan Stanley appreciates the SEC's staff for its consideration of the issues raised in this letter.

Sincerely,



Anne Cooney  
General Counsel  
Morgan Stanley Wealth Management