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By Electronic Mail (rule-comments@sec.gov)

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2015-057

Dear Mr. Errett:

Lincoln Financial Network (LFN or Lincoln) is the marketing name for Lincoln Financial Group's two dually-registered broker-dealers/investment adviser entities: Lincoln Financial Advisors Corp. and Lincoln Financial Securities Corp.¹ LFN appreciates the opportunity to submit this comment letter to the Securities Exchange Commission ("SEC") in response to Financial Industry Regulatory Authority ("FINRA") proposed Rule 2273.

LFN maintains an affiliation with over 8,200 financial advisors, which include registered representatives, investment advisor representatives, insurance brokers and agents. LFN frequently recruits advisors from other FINRA broker-dealers and offers advisors an open architecture business model, allowing them the ability to offer a variety of investment products and solutions. As part of its recruitment efforts, LFN may offer forgivable loans to offset the expenses that advisors incur when transitioning.

I. Background

In January 2013, FINRA published Regulatory Notice 13-02 in which it proposed that hiring firms be required to disclose the actual transition or forgivable loan dollars paid to an advisor when he or she moved between firms. A significant number of firms commented on this proposal believing that the proposal obstructed fair competition and violated an advisor's right to privacy. Many firms also provided reasonable alternatives to alert investors to conflicts of investors without disclosing such private economic information.

In March 2014, FINRA filed proposed Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) with the SEC. Rule 2243 proposed additional obligations of a registered representative and its hiring firm regarding disclosure of transition compensation. Rule 2243 included two primary components: (1) an obligation to disclose a range of compensation to former retail customers who were solicited to transfer accounts to a new firm and (2) a reporting obligation to FINRA if a

¹ LFN is an affiliate of Lincoln Financial Group, whose other affiliated companies act as issuers of insurance, annuities, retirement plans and individual account products and services. The affiliates include, but are not limited to the Lincoln National Life Insurance Company ("LNL"); Lincoln Life and Annuity Company of New York ("LLANY") and Lincoln Financial Distributors ("LFD"), Lincoln's wholesaling arm, a broker-dealer registered with the SEC and a member of FINRA.

transferring registered representative received a significant increase in compensation after moving to a new broker-dealer. Commentators to proposed Rule 2243 conveyed many of the same concerns as Regulatory Notice 13-02 as well as the operational challenges and effectiveness of the proposed disclosures. Accordingly, FINRA withdrew proposed Rule 2243 in June 2014.

In May 2015, FINRA published Regulatory Notice 15-19 and proposed Rule 2272 (Educational Communication Related to Recruitment Practices and Account Transfers). In this third version, FINRA removed the obligation to report increased compensation to FINRA but included a provision that hiring firms send an educational communication to former retail customers so they could make more informed decisions on whether to transfer accounts to the recruiting firm.

On December 16, 2015, FINRA filed proposed Rule 2273 with the SEC. This most recent version requires a member firm to deliver an educational communication in connection with member recruitment practices and account transfers. FINRA believes that former customers would benefit from receiving a concise, plain-English document that highlights the potential implications of transferring assets. The proposed educational communication is intended to encourage former customers to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to the extent that the customer considers the information important to his or her decision making.

The proposed rule change directs the recruiting firm to provide a registered representative's former customer with a FINRA-prepared educational communication when that former customer is contacted to transfer assets or actually transfers assets to the recruiting firm. While this latest proposal (Rule 2273) does make some minor changes based on feedback from the members, there are still several issues that LFN would like to address.

II. Suggested Changes to the Proposal

LFN supports FINRA's overall efforts to protect investors and improve the regulation of conflicts of interests in recruitment and transition situations. The current version is significantly better than prior concepts outlined in Regulatory Notice 13-02 and proposed Rule 2243. LFN also commends FINRA for conducting investor testing and analyzing the economic impact and other consequences of the prior proposals. However, this latest version still does not address several issues that will create unnecessary operational challenges. Accordingly, LFN requests that the proposed rule be further examined and amended so that the rule can be operationalized, while maintaining the spirit and intent of the rule.

A. Educational Communication

In response to FINRA Proposed Rule 2272, LFN requested that the mandatory educational communication, which is at the heart of the proposed rule, be sent not only by the hiring firm, but also by the registered representative's former member firm if that firm attempts to induce the customer to maintain his or her account.² Many member firms incentivize registered representatives by paying a retention bonus if they successfully retain customers of the departing registered representative. This may be a conflict of interest which a customer should be aware, as it could influence the decision about whether to keep an account with the existing member firm or follow a registered representative to a new member firm. FINRA did not address this concern and LFN encourages the SEC to do so.

In its comment letter, LFN also suggested that FINRA amend the communication. LFN continues to believe that the educational communication, as written, needs supplemental content. The

² See LFN comment letter filed on July 13, 2015. Available on the FINRA website at http://www.finra.org/sites/default/files/notice_comment_file_ref/15-19_lincoln_comment.pdf (last visited on January 12, 2016).

communication should also include questions a customer might consider if a member firm is soliciting a customer to maintain their accounts with the firm after a registered representative changes firms. The following topics would be helpful for a customer to make an informed decision:

- Does your current firm have a financial incentive to maintain your account that creates a conflict of interest?
- What financial incentives is your current firm offering the reassigned registered representative to keep you as a customer?
- Does your current firm offer incentives to sell you in-house or proprietary products?
- What costs will you pay – both in the short term and the long-term – if you stay with your current firm?

Supplementing the current educational topics with these additional topics will achieve a more balanced and effective communication to inform the customer's decision.

B. Delivery Requirement

LFN further recommends that FINRA simplify the delivery requirements. The current version presents the same operational challenges as prior versions. Unfortunately, a rule that requires delivery of a disclosure document based on an “oral communication” triggering event is complicated, impractical and cannot be operationalized. Further, this rule requirement would make it challenging for firms to develop written supervisory procedures reasonably designed to achieve compliance and test those procedures.

While FINRA believes that firms should rely on their registered representatives to tell them when they have the first individualized oral contact (thus triggering the obligation to send the communication), it is impractical to test compliance with a requirement like this. FINRA suggested that firms implement appropriate supervisory procedures such as mandatory training, spot checks and certifications to ensure that the registered representative tells his or her firm when they have individualized oral contact with a former customer. Training and certifications can be operationalized. However, when the first contact is “oral” and telephone or verbal conversations are not recorded, a “spot check” is simply an unreliable method of ensuring compliance with a written supervisory procedure.

A practical solution, which can be tested as part of a supervisory control procedure, would be to require the educational communication within a certain time period of an advisor joining a new member firm. Alternatively, FINRA could require the communication to be included when a recruiting firm sends documentation to the customer in order to initiate the Automated Customer Account Transfer (ACAT) process. This documentation is commonly referred to as the “ACAT packet.” Signing ACAT paperwork is ultimately when a customer decides to transfer an account. Including the educational disclosure in the ACAT packet is not too late in the process, as FINRA would suggest, as no account can be transferred until that paperwork is reviewed by the customer, signed and returned to the firm. Other disclosures are included in that packet, so it would be a logical step in the process to provide additional education.

C. Rule 2273 Amended Text

To facilitate these minor changes, LFN proposes changes to the current text of Rule 2273. A mark-up to the rule language is included in Appendix A.

III. Conclusion

LFN is supportive of FINRA's efforts to provide investors with a more complete picture of the factors involved in a decision to transfer assets to a new firm or maintain accounts with an existing firm. If you have any questions, please do not hesitate to contact me at [REDACTED] or [REDACTED]

Respectfully Submitted,



Carrie L. Chelko, Esquire
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Lincoln Financial Network

APPENDIX A

2273. Educational Communication Related to Recruitment Practices and Account Transfers

(a) Educational Communication Delivery Requirement

(1) A member that hires or associates with a registered person shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, individually contacts the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent individualized contact, transfers assets to an account assigned, or to be assigned, to the registered person at the member.

(2) A member that terminates a registered person or has a registered person voluntarily leave the member shall send an educational communication prepared by FINRA when the member, directly or through another registered person, attempts to induce any customers of the departing registered person to maintain their accounts at the member.

(b) Means and Timing of Delivery

(1) A member shall promptly deliver the educational communication in paragraph (a)(1) when a member or registered person at the time of first individualized contact with a former customer by the registered person or the member contacts the former customer regarding the former customer transferring assets to the member. The educational communication shall be delivered to the customer with any account transfer paperwork.

(2) A member shall promptly deliver the educational communication in paragraph (a)(2) when a member is attempting to maintain assets. The educational communication shall be delivered to the customer before the customer's accounts are transferred or reassigned to another registered person of the member.

(A) If the contact is in writing, the written communication required in paragraph (a) must accompany the written communication. If the contact is by electronic communication, the member may hyperlink directly to the educational communication.

(B) If the contact is oral, the member or registered person must notify the former customer orally that an educational communication that includes important considerations in deciding whether to transfer assets to the member will be provided not later than three business days after the contact. The educational communication must be sent within three business days from such oral contact or with any other documentation sent to the former customer related to transferring assets to the member, whichever is earlier.

~~(23)~~ If a former customer attempts to transfer assets to an account assigned, or to be assigned, to the registered person at the member, but no individualized contact with the former customer by the registered person or member occurs before the former customer seeks to transfer assets, the member shall deliver the educational communication in paragraph (a) to the former customer with the account transfer approval documentation.

~~(34)~~ The delivery of the communication required by paragraphs (a)(1) and (a)(2) shall apply for a period of three months following the date the registered person departs one member and begins employment or associates with another the member.