



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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January 20, 2016

Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Re: File No. SR-FINRA-2015-057-Proposed Rule Change to Adopt FINRA Rule  
2273 (Educational Communication Related to Recruitment  
Practices and Account Transfers)

Dear Mr. Errett:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes in order to protect the rights and fair treatment of the investing public. PIABA submits this comment because although we believe the proposed rule is certainly a positive step, as stated in our comment letter regarding Regulatory Notice 15-19, PIABA believes the rule should go further in terms of education communication content and application. PIABA also is concerned that certain key provisions in the prior proposed disclosure have been eliminated to the potential detriment of the investing public.

PIABA generally supports the proposed rule because the bar association feels strongly that public investors would benefit from knowing the potential impact on their accounts if they move them to their broker's new firm, as well as the potential motivations their broker may have to recommend moving their accounts to the new firm. Indeed, PIABA believes the proposed rule should go even further and require similar disclosures to customers by the departing broker's former firm if it is fighting to keep the customer's accounts.

As previously expressed by PIABA (in its July 13, 2015 comment letter on Notice 15-19), PIABA strongly believes that former customers should be informed if their broker is being paid additional "enhanced" compensation for merely bringing client assets to the new firm or for generating new commissions and fee income above the usual payout grid during his or her first few months or years at the new firm. Such customers need to know about, and

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understand, any potential conflicts of interest resulting from that compensation agreement. PIABA believes the educational material, while helpful, does not go far enough. It does not require the firm to specifically disclose potential or actual conflicts. It instead merely shifts the burden to investors to ask their current firm or their departing (or departed) broker to disclose these conflicts. Unlike the previous versions of the proposed rule, the current proposal, does not require the recruiting firm to even disclose enhanced compensation to FINRA. Obviously, such compensation arrangements may color a broker's recommendations and approach to overall account management. PIABA also still firmly believes the education communication requirement rule should apply not only to existing customers transferring from the broker's former firm to the new firm, but also to any new (*e.g.*, not pre-existing) customers that the broker brings into the new firm.

PIABA also reiterates its prior suggestion that the proposed rule require a verification mechanism to ensure receipt of the communication by the customer(s) affected. FINRA's most recent Notice (SR-FINRA-2015-057) said that it will "assess the effectiveness of educational communication requirement without a verification requirement" after the rule is implemented and reconsider a verification requirement if the "educational communication alone is not attracting the attention of customers to influence their decision-making process . . ." PIABA does not know what factors FINRA would review to make such an assessment, but has difficulty believing that the inclusion of a properly-worded, uniform verification (including a prominent reference to the fact that no accounts can be moved without receipt of a signed affirmation) would not increase the chances of the educational communication being taken more seriously by a customer.

Moreover, while FINRA understandably does not want to make the process of moving accounts more onerous than it needs to be, it certainly should not be concerned if a customer's transfer is delayed because they are weighing the important considerations set forth in the educational communication before signing the verification. It also bears noting that the departing broker and his team will no doubt continue to follow-up with the former customers until a final decision is made by the customer and the verification is signed. Thus, delay in transfers due to lack of a signed verification would fall squarely on the former customer whose accounts would simply stay where they are. Such a result simply does not justify omitting a verification from the educational communication.

PIABA was disappointed to see that FINRA not only refused to lengthen the "duration of delivery" requirement in the proposed rule, but instead shortened it from six months to three months. PIABA echoes its request that the proposed rule have a duration of one year (for the reasons previously provided in its July 13, 2015 comment letter on Notice 15-19), but also requests FINRA to at least reconsider its decision to shorten the six-month period to only three months.

Further, for all of the reasons set forth by PIABA in its July 13, 2015 comment letter on Notice 15-19, PIABA echoes its sentiment that the recruited broker's former firm should also be required to disclose similar potential conflict-related financial information if it could influence those vying to keep the customer at the firm from which the broker is leaving (or has left).

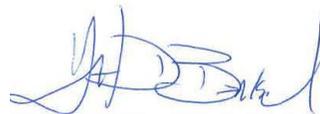
Finally, PIABA still firmly believes that investors would be best served by additional guidance from FINRA on the types of information they should seek from their broker with respect to areas ripe for potential conflicts of interest. As previously proposed by PIABA (in its July 13, 2015 comment letter to Notice 15-19), FINRA should consider adding to the uniform educational communication certain questions, the answers to which may assist investors in their decision-making.

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### Conclusion

In summary, PIABA supports FINRA's proposed rule requiring educational communications be sent to retail customers of a recruited broker, disclosing all enhanced compensation agreements and the potential conflicts of interest inherent in such agreements. However, PIABA believes the proposed educational communication rule does not go far enough in that it should be expanded to include disclosure of all enhanced compensation plans (including at the former firm); should include a verification requirement prior to transfer of accounts; should require communication to former, as well as new, retail clients for a longer period of time than currently proposed; and should include additional guided questions that would assist investors. PIABA thanks FINRA for the opportunity to comment on this proposal.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "H. Berkson".

Hugh D. Berkson  
PIABA President