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January 20, 2016

**Via e-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

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

**RE: SR-FINRA-2015-057: Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers)**

Dear Mr. Errett:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to provide this letter in response to Financial Industry Regulatory Authority’s (“FINRA”) proposed rule filing with the Securities and Exchange Commission (the “SEC”), SR-FINRA-2015-057 (the “Current Proposal”), to adopt FINRA Rule 2273, establishing an obligation for a member to deliver an educational communication in connection with member recruitment practices and account transfers.<sup>1</sup>

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. We employ approximately 14,988 full-service financial advisors in branch offices in all 50 states and 3,838 licensed financial specialists in

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<sup>1</sup> FINRA File No. SR-FINRA-2015-057 – Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers), available at: [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2015-057.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057.pdf).

retail bank branches across the country.<sup>2</sup> WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

## **I. EXECUTIVE SUMMARY**

WFA supports FINRA's objective to provide investors a concise, plain-English document that highlights the potential implications of transferring assets and encourages them to make further inquiries of the transferring registered representative. However, WFA continues to have operational and supervisory concerns with the Current Proposal, particularly with the provision regarding oral discussions as a trigger for the delivery obligation. As set forth in our two prior comment letters on this topic and again herein, WFA continues to believe that informing former customers of potential conflicts of interest, prior to their decision to transfer, can be more efficiently met and more reasonably supervised by requiring the educational communication be included with account transfer documents.

## **II. BACKGROUND**

### **A. Initial Proposal Filed With the SEC - March 2014**

In March 2014, FINRA filed a proposal<sup>3</sup> (the "Initial Proposal") with the SEC containing two primary components: (1) a disclosure obligation to former retail customers when the recruiting firm attempts to induce such customers to follow a transferring registered representative; and (2) a reporting obligation to FINRA where a transferring representative receives a significant increase in compensation.

The disclosure obligation in the Initial Proposal would have required a member recruiting firm to disclose to transferring customers ranges of recruitment compensation that a recruited registered representative received or would receive in connection with changing firms and the basis for that compensation, the costs a customer would incur when transferring assets to the new firm that were not reimbursable and if any of the customer's assets were not transferable to the broker's new firm. These disclosures had to be made for one year

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<sup>2</sup> 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 retail 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.

<sup>3</sup> FINRA File No. SR-FINRA-2014-010, Release No. 34-71786 - Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 - Disclosures and Reporting Obligations Related to Recruitment Practices, available at: <https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf>. See also Regulatory Notice 13-02 (Recruitment Compensation Practices) (January 2013), available at <http://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf>.

following the date the registered representative began employment or associated with the new firm.

WFA generally supported the Initial Proposal, but we also joined many in the industry in expressing concerns about the proposal's competitive implications and operational challenges, as well as the effectiveness of the proposed compensation disclosures. Subsequently, in June 2014, FINRA withdrew the Initial Proposal.

#### **B. Second Proposal - May 2015**

Regulatory Notice 15-19<sup>4</sup> (the "Second Proposal") was issued by FINRA in May 2015. Under the Second Proposal, FINRA eliminated both the disclosure obligation and the reporting requirement contained in the Initial Proposal. The Second Proposal would have required delivery of a FINRA-created educational communication when (1) the member, directly or through a registered representative, "attempted to induce" their former customer to transfer assets to their new firm; or (2) their former customer, absent inducement, transferred assets to an account assigned, or to be assigned, to the registered person at the new firm.

#### **C. Current Proposal**

The Current Proposal differs from the Second Proposal by removing the "attempt to induce" concept, as well as reducing the time period over which the educational communication must be delivered to former customers from 6 months to 3 months. WFA recognizes the importance of FINRA's goal of encouraging a former customer of a transferring registered representative to become better informed when making a decision whether to transfer assets to a new firm, and offers the following suggestions to make the Current Proposal more operationally feasible.

### **III. DISCUSSION**

#### **A. The Delivery Requirement For Oral Communication Should Be Eliminated.**

The Current Proposal would require a member to deliver the educational communication at the time the transferring representative or the member makes the first individualized contact with a former customer regarding transferring assets to the member. The Current Proposal further stipulates that if this individualized contact is oral, the member or transferring representative must notify the former customer orally that the educational communication will be provided not later than three business days after the individualized contact. The educational communication must then be sent within three business days from

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<sup>4</sup> Regulatory Notice 15-19, Recruitment Practices – FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (May 2015). [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory\\_Notice\\_15-19.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf).

such oral contact or with any other documentation sent to the former customer related to transferring assets to the member, whichever is earlier.

WFA previously expressed its concern that oral disclosures at the time of “first individualized contact” with a former customer to transfer assets are problematic to supervise, unnecessarily cumbersome and could lead to delays in customer service.<sup>5</sup> WFA submits that FINRA’s position understates the practical difficulty and administrative burden that proper supervision and appropriate documentation of oral disclosures would present to members, while overstating the benefit to former customers.

Moreover, regulatory disclosures are traditionally delivered in a written format to facilitate verifiable evidence of compliance that eliminates ambiguity as to the substance of the information provided and the timing of such disclosure. Furthermore, an oral disclosure requirement creates redundancy as clients contacted orally would also receive written disclosures within three business days.

Use of oral discussions with former customers as the trigger for delivery of the educational communication will result in an inconsistent application of the delivery requirement. Under the Current Proposal, firms would be required to redesign their supervisory systems to monitor the content of such oral communications. Further, firms would have to rely on the transferring representative to report this contact in a timely manner so the educational communication could be sent within the required three business day timeframe.

**B. The Educational Material Should Be Provided With Asset Transfer Paperwork.**

WFA strongly recommends that the final rule should require recruiting firms to provide clear and prominent written disclosures (i.e. the educational communication) that accompany 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.

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<sup>5</sup> WFA comment letter to FINRA in response 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/sites/default/files/NoticeComment/p220097.pdf>.

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#### **IV. CONCLUSION**

WFA appreciates the opportunity to respond to the Current Proposal and commends FINRA and the SEC's continuing efforts to further educate investors on important issues when determining whether to transfer assets to a new firm. If you would like to discuss this issue further, please contact me at [robert.j.mccarthy@wellsfargoadvisors.com](mailto:robert.j.mccarthy@wellsfargoadvisors.com) or (314) 242-3193.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is stylized and cursive.

Robert J. McCarthy  
Director of Regulatory Policy