

January 20, 2016

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

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

Re: File Number SR-FINRA-2015-057: Proposed FINRA Rule 2273 to Require Delivery of an Educational Brochure to Former Clients of Transferring Registered Representatives

Dear Mr. Errett:

Raymond James & Associates, Inc. (“RJA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposal to adopt Rule 2273, which would require delivery of a FINRA-created educational brochure to former clients of a registered representative transferring to another member firm (“**Proposed Rule 2273**”).¹

I. Introduction

RJA is a full service broker-dealer, comprised of 377 branch and satellite offices throughout the U.S. and 4,545 employees. RJA’s financial professionals provide asset management, retirement planning, and investment management services to its retail clients. Additionally, RJA is engaged in most aspects of securities distribution, trading, and investment banking. As of September 30, 2015, RJA had \$7.9 billion in assets and excess net capital of \$371.8 million.

II. Summary of Proposed Rule 2273

Proposed Rule 2273 would require a member firm that employs a transferring registered representative to provide the Educational Brochure to the representative’s former clients when:

- (1) The member, either directly or through the transferring representative, individually contacts the former clients to transfer assets to the recruiting firm; or
- (2) The former clients, absent individualized contact, transfer their assets to accounts assigned, or to be assigned, to the transferring representative.

¹ Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers), 80 Fed. Reg. 81,590 (proposed December 30, 2015), *available at* https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057-federal-register-notice.pdf.

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FINRA has drafted the Educational Brochure, which is included in Proposed Rule 2273. The Educational Brochure would highlight the potential implications of transferring assets to the recruiting firm and suggests questions former clients may want to ask their financial advisor before making a final decision to transfer assets, including:

- (1) Possible conflicts of interests resulting from financial incentives received by the transferring registered representative;
- (2) Potential costs related to transferring assets to the recruiting firm; and
- (3) Differences in products and services offered between the former client's current firm and the recruiting firm.

The member firm would need to provide the Educational Brochure either at the first time of contact with the former client, or shortly thereafter, depending on the form of contact.

- (1) Written Contact: the Educational Brochure must accompany the written communication.
- (2) Electronic Contact: the recruiting firm may hyperlink directly to the Educational Brochure.
- (3) Oral Contact: the recruiting firm must send the Educational Brochure to the former client within three business days or with any other communication sent by the recruiting firm to the former client in connection with a potential transfer of assets. The recruiting firm or representative must inform the former client that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm.

The firm or transferring representative must deliver the Educational Brochure to any former client who seeks to transfer assets to an account assigned, or to be assigned, to the representative at the recruiting firm even absent contact from the recruiting firm or transferring representative. The requirement to provide the Educational Brochure would continue to apply for three months following the date that the registered representative became employed by the recruiting firm.

Proposed Rule 2273 exempts SEC-registered investment advisors from complying with the Educational Brochure delivery requirement.² The requirement also does not apply to non-natural, institutional clients with total assets of at least \$50 million or to former clients that expressly state their lack of interest in transferring assets to the recruiting firm. FINRA further interpreted Proposed Rule 2273 to exclude circumstances where a former client's account is transferred to a new member firm as part of a bulk transfer or due to a change to the broker-dealer of record.

² However, Proposed Rule 2273 applies to dually-registered advisors who act in the capacity as a registered representative. *See id.* at 81,601.

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III. Changes from the Prior Proposal

RJA appreciates FINRA's review and consideration of RJA's comments³ regarding the previous version of the Proposal, as detailed in FINRA Regulatory Notice 15-19 (the "Prior Proposal").⁴ In particular, the Prior Proposal recommended requiring member firms to deliver the Educational Brochure after any "attempt to induce" a former client to transfer assets to the recruiting firm. In RJA's previous comment letter to FINRA, dated July 13, 2015, RJA noted that the inducement verbiage did not specify as to exactly when an oral conversation between a transferring representative and a former client became an attempt to induce transfer. Thus, delivery based on inducement would have presented significant operational and supervisory challenges to RJA. Proposed Rule 2273 provides some clarity by requiring delivery subsequent to the transferring representative's "individualized contact" with the former client "to transfer assets."

Additionally, the Prior Proposal stated that the delivery requirement of the Educational Brochure would apply for six months after the hiring date of the transferring representative. FINRA subsequently shortened the delivery time period to three months following a representative's employment date in Proposed Rule 2273, as recommended by RJA and other member firms, in recognition of the supervisory burdens posed by a longer timeframe. RJA commends FINRA for making the aforementioned revisions.

IV. Comments on Proposed Rule 2273

A. The Three Business Day Delivery Requirement Subsequent to Oral Contact Presents Supervisory and Operational Challenges

RJA requests that FINRA reconsider Proposed Rule 2273's three business day notification period for delivering the Educational Brochure after individualized contact. As mentioned in its previous comment letter, the three business day timeframe places significant supervisory and operational burdens on member firms. To alleviate these concerns, RJA supports supplying the Educational Brochure to former clients with account transfer documentation.

From a supervisory standpoint, although member firms regularly monitor e-mail and physical mail sent and received by representatives, RJA is generally not a party to, nor requires the recording of, representatives' oral conversations with clients. As a result, member firms would have to rely on the transferring representatives to self-report any oral individualized contact with their former clients. Due to the logistical challenges associated with monitoring such communication, RJA recommends revising Proposed Rule 2273 to require the delivery of the Educational Brochure to the former clients with account transfer documentation. Aligning the mailing of the Educational Brochure to existing account transfer documentation processes would allow member firms to implement supervisory and operational controls to monitor compliance with Proposed Rule 2273. Furthermore, former clients would still have the opportunity to review the Educational Brochure and discuss any questions with the transferring representative prior to account transfer.

Assuming that transferring representatives timely reported their oral communication with their former clients to the member firm, the three business day window for sending the Educational Brochure is operationally burdensome. To ensure that former clients are receiving the Educational Brochure in the limited timeframe, member firms would have to educate financial advisors, compliance employees, and

³ See Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers, SR-FINRA-2015-057, Ex. 2b(22), available at https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-057.pdf.

⁴ See Regulatory Notice 15-19, FINRA, May 2015, available at <https://www.finra.org/industry/notices/15-19>.

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supervisory professionals, as well as spend resources to implement necessary processes and systems. Furthermore, if a representative possessed only the former client's telephone number without his or her e-mail or physical address, the member firm would have to call the former client for the necessary mailing information. Given these operational complexities, any of which could result in delays, it would prove difficult, if not impossible, for member firms to meet Proposed Rule 2273's requirement to send the Educational Brochure within three business days. Lengthening the time frame for delivery to ten business days after oral individualized contact would ease the aforementioned operational burdens associated with Proposed Rule 2273.

Therefore, if FINRA requires mailing the Educational Brochure prior to sending the account transfer documentation, RJA alternatively recommends increasing the time frame to send the Educational Brochure within ten business days from the date of individualized contact.

B. RJA Requests FINRA to Define "Individualized Contact"

While RJA thanks FINRA for clarifying that delivery of the Educational Brochure is triggered when a representative "individually contacts" a former client "to transfer assets," RJA requests additional clarification surrounding such "individualized contact." Without further explanation, RJA is concerned that the term is overbroad and may include mere social interaction between transferring representatives and former clients. Furthermore, FINRA provides a list of communications that may meet the definition of "individualized contact," but mentions that other types of communication may trigger compliance with Proposed Rule 2273 without greater detail.⁵ To properly exclude non-business related communication between transferring representatives and former clients, RJA reiterates its recommendation that Proposed Rule 2273 require the delivery of the Educational Brochure with account transfer documentation.

Lastly, if the Educational Brochure delivery requirement is predicated on "individualized contact" with the former client, the requirement may be triggered when the former client initiates contact with the transferring representative. RJA notes that the Prior Proposal only required member firms to deliver the Educational Brochure upon the transferring representative's attempt to induce his or her former clients to transfer their assets. Thus, RJA believes that the "inducement" language presupposed initial contact by the representative. Due to the revision of terminology, RJA requests clarification regarding whether the former client's unprompted contact with the representative would also require the member firm to send an Educational Brochure.

C. RJA Recommends Inclusion of a Safe Harbor Provision Specifying that Proposed Rule 2273 Does Not Interfere with Member Firms' Privacy Obligations

RJA appreciates FINRA's review of the effect of Proposed Rule 2273 on member firms' compliance with Regulation S-P⁶, the Protocol for Broker Recruiting (the "Protocol")⁷, and other obligations. However, RJA respectfully asks for further evaluation of the impact of Proposed Rule 2273 on member firms' privacy obligations. In particular, if a representative employed by a non-Protocol firm is terminated by said firm and subsequently becomes employed by another member firm, he or she may only possess limited former client contact information such as the former client's telephone number. If the transferring representative subsequently contacts his or her former client, RJA remains concerned that the representative would not be entitled to share the former client's information (most notably, the former client's physical or e-mail address) with the member firm without the recruiting firm following the notice and opt-out requirements dictated by

⁵ Notice, 80 Fed. Reg. at 81,591.

⁶ 17 C.F.R. § 248.

⁷ Bressler, Amery & Ross P.C., 2004, available at <http://www.bressler.com/broker-protocol>.

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Regulation S-P.⁸ Furthermore, if the representative only has a former client's telephone number, the member firm may be unable to determine the former client's e-mail or physical address, making compliance with Proposed Rule 2273 impossible.

Additionally, while FINRA noted that the Protocol permits representatives of signatory firms to take former client non-public personal information when they change firms,⁹ RJA notes that not all member firms are signatories to the Protocol. Thus, situations exist where recruiting firms prohibit transferring representatives from taking former client non-public personal information with them. Furthermore, a representative may violate existing obligations with prior firms to refrain from soliciting a former client by sending the Educational Brochure to them. As such, compliance with Proposed Rule 2273 may be interpreted by courts as a violation of member firms' responsibility to avoid solicitation of former clients.

In light of these concerns, RJA suggests that Proposed Rule 2273 include a safe harbor provision for member firms, specifying that compliance with Proposed Rule 2273 is not intended to interfere with member firms' obligations under Regulation S-P, the Protocol, or other contractual privacy obligations. RJA notes that FINRA has included such language in other proposed rule-making.¹⁰ Such explicit language within Proposed Rule 2273 may resolve any possible conflict that may arise from member firms asking for former client contact information and sending the Educational Brochure.

D. RJA Seeks Clarification for Broker-Dealer Transfers Under the Same Holding Company

RJA requests that FINRA opine on asset transfers between broker-dealer subsidiaries of the same holding company. RJA and Raymond James Financial Services, Inc. ("RJFS"), both FINRA member firms, are broker-dealer subsidiaries of Raymond James Financial, Inc. While RJA and RJFS are separately registered as broker-dealers with FINRA, representatives affiliated with RJFS offer their clients products and services offered through RJA and clear all of their business on a fully disclosed basis through RJA. Given the similarity in products and services offered between RJA and RJFS, RJA does not believe that the questions in the Educational Brochure provide any value to clients transferring between RJA and RJFS. Based on the aforementioned situation, RJA requests that FINRA provide an exception from the Educational Brochure delivery requirement for asset transfers between broker-dealer subsidiaries under the same holding company.

E. FINRA Should Replace the Term "Broker" in the Educational Brochure

RJA requests that FINRA replace the "broker" reference in the Educational Brochure with "registered representative" to provide additional clarity to readers and remove what has become a somewhat derogatory term. FINRA itself eschews using "broker" in its own materials addressed to registered representatives in the industry.¹¹ Furthermore, RJA and other member firms frequently use the term "financial advisor" to reflect the full scope of financial services that representatives may offer clients. Use of the term "broker" with clients perpetuates the outdated image of a transactions and commissions-oriented broker – not a trusted, client-oriented investment professional.

⁸ See Regulation S-P §§ 248.4(a)(2) (requiring the provision of "a clear and conspicuous notice" of the firm's privacy policies and practices to a consumer), 248.10(a)(1) (prohibiting disclosure absent client's failure to opt out within a reasonable timeframe), 248.10(b) (mandating compliance regardless of whether the firm and the former client "have an established business relationship").

⁹ Notice, 80 Fed. Reg. at 81,591.

¹⁰ See Regulatory Notice 15-37, FINRA, October 2015, available at <https://www.finra.org/industry/notices/15-37> (stating that proposed FINRA Rule 2165 includes a safe harbor provision when exercising discretion).

¹¹ See, e.g., Registered Representatives Brochure, FINRA, available at <https://www.finra.org/sites/default/files/registered-representatives-brochure.pdf>.

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V. Conclusion

Thank you for adopting some of the recommended changes in Proposed Rule 2273, as suggested by RJA and other member firms. In particular, RJA commends FINRA for eliminating the “attempt to induce” language and reducing the delivery timeframe from six months to three months after a representative’s employment date. However, RJA respectfully requests consideration of the recommendations included in items A through E above to clarify the application of Proposed Rule 2273, as well as address the remaining supervisory and logistical challenges presented by the proposed rule.

Sincerely yours,



Tash Elwyn
President, Private Client Group
Raymond James & Associates, Inc.