

January 20, 2016

By Electronic Mail to rule-comments@sec.gov

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

Re: SR-FINRA-2015-057: Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers)

Dear Mr. Errett:

LPL Financial LLC (“LPL”) appreciates the opportunity to comment on the proposal (“Proposal”) by the Financial Industry Regulatory Authority (“FINRA”) to adopt FINRA Rule 2273, Educational Communication Related to Recruitment Practices and Account Transfers.¹ LPL is fully supportive of FINRA’s efforts to increase transparency for investors regarding potential conflicts of interest presented by recruitment compensation and to provide investors with important information pertaining to transferring accounts from one broker-dealer to another. We believe that the Proposal will achieve these goals. Further, we appreciate FINRA’s thoughtful consideration of the comment letters it received regarding FINRA Regulatory Notice 15-19 and its helpful discussion of the comments in the Proposal.

In the sections that follow, we set forth our support for FINRA’s interpretation that the rule would not apply to bulk account transfers and broker-dealer of record changes, and ask that this exclusion be broadened to include all changes in networking arrangements between financial institutions and broker-dealers, not just those for which bulk transfers are utilized. We also address the possibility that sending the Educational Communication with new contact information could be viewed incorrectly as a solicitation; seek guidance regarding unanticipated oral communications between former clients and registered representatives; and request clarification regarding the application of the proposed rule when a former client only has investment advisory accounts.

¹ See Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers), Securities Exchange Act Release No. 76757 (Dec. 23, 2015), 80 FR 81590 (Dec. 30, 2015) (SR-FINRA-2015-057), available at <http://www.finra.org/industry/rule-filings/sr-finra-2015-057> (last visited Jan. 13, 2016).

I. OVERVIEW OF LPL

LPL is a leader in the retail financial advice market and, as of September 30, 2015, serves about \$462 billion in advisory and brokerage assets. LPL is the nation's largest independent broker-dealer, a top custodian for registered investment advisors, and a leading independent consultant to retirement plans. We provide proprietary technology solutions, comprehensive clearing and compliance services, practice management programs and training, and independent research to more than 14,000 independent financial advisors and over 700 banks and credit unions. Our financial advisors provide financial advice to investors with assets in approximately 4.6 million client accounts. They service an estimated 40,000 retirement plans, with an estimated \$115 billion in retirement plan assets as of September 30, 2015. LPL also supports approximately 4,300 financial advisors licensed and affiliated with insurance companies with customized clearing, advisory platforms, and technology solutions. LPL and its affiliates have about 3,400 employees with primary offices in Boston, Charlotte, and San Diego.

LPL is dually registered with the SEC as an investment adviser and a broker-dealer. As of September 30, 2015, LPL had approximately \$180 billion in advisory assets under custody.

LPL helps independent financial advisors establish their own successful businesses through which they can offer independent financial guidance and advice to investors. Our independent financial advisors build long-term relationships with their clients across the U.S. by guiding them through the complexities of investment decisions, retirement solutions, financial planning, and wealth management. In addition, LPL supports financial advisors and program managers at community and regional banks and credit unions by enabling them to offer investors a wide array of investment, advisory, and insurance products.

II. COMMENTS AND RECOMMENDATIONS

A. EXCLUSION FOR CHANGES IN BROKER-DEALER OF RECORD, BULK TRANSFERS, AND CHANGES IN NETWORKING ARRANGEMENTS

FINRA proposes interpreting the rule “as not applying to circumstances where a customer’s account is proposed to be transferred to a new firm via bulk transfer or due to a change of broker-dealer of record.”² LPL supports FINRA’s interpretation and requests that it be extended to include all changes in networking arrangements between a financial institution and a broker-dealer, not just those for which bulk transfers are utilized.

NASD Notice to Members 02-57 and the Opinion of General Counsel regarding NASD Notice to Members 04-72 permit bulk transfers of accounts when there is a change in a networking arrangement between a financial institution and a broker-dealer.³ The decision of a

² Proposal, 80 FR at 81596.

³ See NASD Notice to Members 02-57 (Sept. 2002) at 563; Memorandum from the NASD Office of the General Counsel regarding Notice to Members 04-72 available at <https://www.finra.org/industry/interpretive-letters/november-8-2004-1200am> (last visited Jan. 15, 2016).

financial institution to transfer its networking arrangement to a new broker-dealer is made by the financial institution, not the registered representatives. In some instances where there is a change in networking arrangement, broker-dealers may choose not to leverage the bulk transfer process, even though it is available to them. This could occur, for example, if a bulk transfer would not comply with a broker-dealer's privacy policy or if the number of accounts is small. Accordingly, we ask FINRA to consider excluding all changes in networking arrangements, not only those for which broker-dealers choose to use the bulk transfer process.

B. THE EDUCATIONAL COMMUNICATION IS NOT A SOLICITATION

In its Proposal, FINRA addressed industry concerns that sending the Educational Communication along with a letter setting forth new contact information could result in the letter being interpreted incorrectly as a solicitation.⁴ FINRA explained that it “does not intend for the provision of the educational communication to have any relevance to a determination of whether a representative impermissibly solicited a former customer in breach of a contractual obligation.”⁵ We agree with this approach. Given the possibility that this issue could be presented to a court that is less familiar with the Educational Communication, we recommend that FINRA add to the Educational Communication the following statement: “This document, whether viewed by itself or with a letter providing only updated contact information, is not intended as a solicitation for the transfer of assets.”

C. UNANTICIPATED ORAL COMMUNICATIONS AND CONTRACT REQUIREMENTS

LPL seeks clarification regarding whether the rule would be triggered by unanticipated oral communications, such as when the former client calls the representative or the representative encounters the former client in the community. In certain situations, representatives are bound by contracts with former firms that prohibit them from maintaining or requesting contact information for former clients. In such a circumstance, if the unanticipated oral communication triggers the rule, the representative may not be able to comply. Accordingly, if unanticipated communications would require the registered representative to send the Educational Communication, we suggest that FINRA grant an exception for situations where the registered representative does not have a mailing or email address for the former client.

D. APPLICATION OF THE PROPOSAL IN SITUATIONS WHERE A FORMER CLIENT ONLY HAS INVESTMENT ADVISORY ACCOUNTS

We thank FINRA for the guidance that the Proposal would apply to representatives who are dually registered at the recruiting firm as investment adviser and broker-dealer

⁴ Many registered representatives enter into non-compete or non-disclosure agreements when hired by a member firm. These agreements generally preclude registered representatives from soliciting their clients in the event they move to a new firm. In some instances, they permit the registered representative to send only a letter that provides new contact information. Courts generally do not interpret such letters as solicitations.

⁵ Proposal, 80 FR at 81599.

Mr. Robert W. Errett
January 20, 2016
Page 4

representatives; and that it would not apply if the representative only registered at a member firm as an investment adviser representative, or transferred to a non-member firm.⁶ There may be instances where dually registered representatives have former clients who only have investment advisory accounts at the former firm. We recommend that FINRA clarify whether the rule would require a dually registered representative (or her firm) to send the Educational Communication to former clients who have investment advisory accounts but no brokerage accounts.

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We appreciate your consideration of these comments. We would be pleased to provide additional information regarding any of these topics. If you have any questions regarding this letter or would like to discuss any of these points further, please do not hesitate to contact me or Sarah Gill, Senior Vice President and Head of Policy, Government Relations, at [REDACTED].

Sincerely,


David P. Bergers

⁶ See *id.* at 81601.