VIA ELECTRONIC MAIL

April 17, 2014

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number SR-FINRA-2014-010

Dear Ms. Murphy:

In its Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices)[1] ("Proposed Rule"), FINRA has proposed establishing disclosure and reporting obligations related to member firms' recruitment compensation for registered representatives ("RRs") joining their firms. The Proposed Rule would require member firms to specifically disclose "upfront payments" and "potential future payments," as defined in the proposal, to an RR's clients before the clients transfer their existing accounts from the RR's "previous firm" to the recruiting firm.

Commonwealth Financial Network® ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 RRs who are independent contractors conducting business in all 50 states.

Commonwealth appreciates the opportunity to comment on the Proposed Rule. While we understand FINRA's concerns regarding the potential conflicts of interest that may occur when an RR changes firms, FINRA cites no enforcement actions, cases, or other empirical evidence that transition assistance creates a conflict of interest between RRs and clients. We urge the Commission to reject the Proposed Rule in its current form and direct FINRA to redraft the proposal so it is narrowly tailored to address actual conflicts of interest, supported by actual empirical evidence, before resubmitting it to the Commission.

Proposed Rule

The Proposed Rule is based on the flawed premise that when recruiting firms offer recruiting compensation in the form of loans and other transition assistance, it creates a potential conflict of interest between an RR and a client. FINRA needs to recognize the difference between signing bonuses and other cash payments that are intended to provide a material financial incentive to

[1] Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices), SR-FINRA-2014-010, 79 Fed. Reg. 17592 (Mar. 28, 2014).

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encourage RRs to switch firms (such as payments of 100 to 300 percent of the RR's trailing 12 month's revenues) and loans and other transition assistance that are designed solely to help offset the substantial costs incurred by RRs when they transition from one firm to another. Although there may be financial reasons for an RR to leave one member firm for another, the types and nature of the loans or other transition assistance paid to RRs by independent contractor firms like Commonwealth does not motivate an RR to change firms, nor does such transition assistance create a conflict of interest between Commonwealth's RRs and their clients.

Leaving a firm to join another firm, particularly in the independent broker/dealer channel, is costly and a major disruption for an RR's practice and personal life. It is a decision that is based on many factors, and it is not taken lightly. Among the varied reasons often cited by RRs who leave their existing firms to join Commonwealth are material ownership or management changes at the previous firm, limited product choice or pressure to sell proprietary products, inferior service from the previous firm's home office staff, outdated technology, or a desire for more independence to manage their practice in a way that best serves clients.

Transitioning from one firm to another generally takes three months or more, during which time the RR is not generating substantial revenue or able to engage in normal business development activities. The transition assistance provided by Commonwealth and many other "independent contractor" broker/dealers to a transitioning RR does not provide a "lucrative financial incentive" for the RR to leave his or her firm to join Commonwealth. Rather, the transition assistance is simply designed to provide the RR with sufficient working capital to help offset the substantial costs incurred and the revenues lost as the RR works through the laborious and time-intensive process of changing broker/dealers. Even though RRs are not able to engage in substantial revenue-producing activity during the transition, they must continue to pay staff salaries and overhead; often incur costs associated with the acquisition of new office space, equipment, and furnishings; and must pay other associated upfront costs for printing new stationery, business cards, signage, and the like.

Commonwealth's transition assistance is therefore designed to help put the RR in roughly the same position as the RR would have been had he or she not changed broker/dealers. Such transition assistance is by no means sufficient enough to provide the RR with a material financial benefit that would rise to the level of creating a conflict of interest with clients.

Definition of "Upfront Payments"

FINRA's proposed definition of "upfront payments" is overly broad. The proposed definition includes, "e.g., payments in the form of cash, deferred cash bonuses, forgivable loans, loan-bonus arrangements, *transition assistance*, or in the form of equity awards (e.g., restricted stock, restricted stock units, stock options, etc.) or other ownership interest" [emphasis added]. FINRA should remove from the definition of "upfront payments" the overly broad term "transition assistance" and include only compensation that is substantial enough to present a material conflict of interest, after deducting all tangible costs incurred by the RR in making the transition.

FINRA should instead recognize that "transition assistance" is how members help transitioning advisors offset the direct cost of transitioning from one firm to another. FINRA acknowledges

that offsets to direct costs are not a "lucrative financial incentive" that motivates advisors to change firms and specifically allows firms to net out these direct costs when calculating compensation per Supplementary Material section .04 in the Proposed Rule (see discussion of Calculating Compensation below.)

De Minimus Exceptions to Disclosure and Reporting Requirements
FINRA should increase the de minimus exception threshold for the disclosure requirement in Proposed Rule 2243 (a)(1) and make it consistent with the threshold triggering the FINRA reporting requirement in Proposed Rule 2243 (c). FINRA should only require members to disclose to former customers an increase in the registered person's prior-year compensation of the greater of 25% or $100,000.

Disclosure of Costs to Customers
Commonwealth does not object to disclosing unreimbursed costs of transferring a former customer's assets, such as transfer fees and termination fees, as required by Proposed Rule 2243 (a)(3). Nor does Commonwealth oppose disclosing the implications of nonportable assets, as required by Proposed Rule 2243 (a)(3). Commonwealth suggests, however, that FINRA allow firms to provide these disclosures in customer account transfer forms. Clients must complete the receiving firm's customer account transfer forms to initiate a transfer, and these forms are the most logical and appropriate method for delivering disclosures relating to costs and other material information about transferring accounts.

Calculating Compensation
FINRA must clarify the formula for calculating compensation for the purposes of Proposed Rule 2243 (a) and (c) described in Supplementary Material section .04. The Proposed Rule requires that members "(1) must assume that all performance based conditions on the registered person's compensation are met; (2) may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied; and (3) may net out any increased costs incurred directly by the registered person in connection with transferring to the member."

The timing of the proposed disclosures is problematic because the Proposed Rule requires members to disclose upfront payments at the time of the first individualized contact with a former customer, and RRs will not know the amount or extent of the direct costs of transition until 90 to 120 days or more after joining a new firm.

Because of this timing issue, FINRA must allow firms to make reasonable, good faith estimates of the direct costs RRs are likely to incur during the first three months at a new firm. FINRA should specifically allow firms to include all of the following items as "direct costs":

- Lost production
- Increased salaries and overtime
- Costs associated with the acquisition of new office space (lease or mortgage)
- Office furniture and furnishings
- Office supplies
- Computer equipment and peripherals (hardware and software)

- Office equipment (Internet access, fax machines, postage meters, telephones and telephone installation)
- Marketing materials (stationery, website development, advertising/promotion, mass mailings, thank-you cards, etc.)
- Overnight postage and other mailing costs
- Operating costs (E&O insurance, SIPC assessment, utilities, etc.)
- Research program costs and financial planning tools

Other Considerations Regarding Details of the Proposed Rule
Proposed Rule 2243 (a)(2) would require firms to disclose the basis for determining any upfront payments or aggregate future payments in connection with transferring to a member. This information is particularly irrelevant. Even if a customer would consider the RR's recruitment compensation material information, it is entirely far-fetched that a customer would care how the compensation is calculated. Moreover, the proposed requirement to disclose the basis for the upfront or future payments will only lead to investor confusion. The typical investor would not understand calculations based on a percentage of fee-based assets under management or "trailing 12 of gross dealer concessions."

In the Supplementary Material to the Proposed Rule, section .01 describes the ranges that members must use when disclosing compensation. The ranges FINRA outlines are very broad and could give customers the mistaken impression that RRs who received $100,000 may have received as much as $500,000. FINRA should specifically allow members to disclose narrower ranges of upfront compensation.

Proposed Rule 2243 (b)(3) requires the delivery of disclosures required in paragraph (a) for one year following the date the RR associates with the member. If FINRA adopts the rule, it should require the disclosure for no more than 90 days, which is the usual amount of transition time when RRs change firms.

Existing FINRA Rules Addressing Conflicts of Interest
In Regulatory Notice 13-02[2], FINRA described the specific concerns regarding enhanced compensation packages and cited a 2009 open letter to broker/dealer CEOs from SEC Chairman Mary Schapiro[3]. Chairman Schapiro's letter stated that ". . . if a registered representative is aware that he or she will receive enhanced compensation for hitting increased commission targets, the registered representative could be motivated to *churn customer accounts, recommend unsuitable investment products or otherwise engage in activity that generates commission revenue but is not in investors' interest*" [emphasis added].

FINRA Rule 2111 already addresses churning, unsuitable recommendations, or other activity not in investors' interest. In addition, FINRA Rule 3010 requires member firms to maintain a system to supervise each RR that is reasonably designed to comply with applicable rules. These rules

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[2] Regulatory Notice 13-02 (Jan 4, 2013), *available at* http://www.finra.org/Industry/Regulation/Notices/2013/P197600.
[3] See "Open Letter to Broker-Dealer CEOs from SEC Chairman Mary L. Schapiro," dated August 31, 2009.

complement each other and create an effective regulatory framework to address the purported conflicts of interest outlined in Chairman Schapiro's letter. FINRA's Proposed Rule is unnecessary and redundant, overlapping existing Rules 2111 and 3010.

Investor Impact

The Proposed Rule would add more disclosures to an already overwhelming amount of paperwork clients must complete. Moreover, requiring disclosure of legitimate transition assistance that merely helps offset transition costs that are personally incurred by an RR and provide no net benefit to the RR would be materially misleading to the detriment of the RR, as it would imply that the RR had a financial incentive to make the switch when that simply was not the case. Additionally, FINRA runs the risk of creating a situation in which investors are bombarded with so much information that it becomes impossible to distinguish between truly important, material disclosure and misleading or factually inaccurate legalese. FINRA must exercise great care in its rulemaking to ensure that proposed rules provide for meaningful disclosures of material information. Investors deserve quality disclosures of material information rather than a vast quantity of disclosures of immaterial conflicts of interest.

FINRA believes that investors will benefit from information regarding recruitment compensation packages when making a decision to transfer their assets to a recruiting firm. This is a misconceived notion. Information regarding an RR's recruitment compensation is simply not material.

Conclusion

Again, we appreciate the opportunity to comment on the Proposed Rule, and we hope that FINRA reconsiders the proposal, as it would only create an additional disclosure to clients that is unnecessary and would provide no material benefit to investors. When deciding whether to transfer assets, investors consider two things: whether they are happy with their RR, and the actual costs of transferring their assets.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,
Commonwealth Financial Network

/s/ Andrew Daniels
Managing Principal, Business Development