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Submitted Via Email to *Rule-Comments@SEC.gov*

April 17, 2014

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

Re: FINRA Rule 2243 – Disclosure and Reporting Obligations Related to Recruitment Practices (File No. SR-FINRA-2014-010)

Dear Ms. Murphy:

Cetera Financial Group, Inc. appreciates the chance to comment on proposed FINRA Rule 2243, Disclosure and Reporting Obligations Related to Recruitment Practices ("Proposed Rule"). Cetera Financial Group, Inc. ("Cetera") is the holding company of four independent channel broker-dealers[1] with approximately 7,400 financial advisors and nearly 600 financial institutions. Our broker-dealers conduct a retail business, and serve customers of all income levels and sophistication.

Cetera supports disclosure to investors of material conflicts of interest, including potential conflicts of interest that may arise in connection with recruitment of registered representatives. For this reason, Cetera continues to support a delivery of a plain-English written disclosure of recruitment compensation no later than delivery of account transfer approval documentation.

While the Proposed Rule adopts some of the comments submitted in response to Regulatory Notice 13-02, it includes new provisions which raise additional troubling operational and administrative challenges, as outlined herein. Additionally, the proposing release[2] lacks any economic analysis of the costs and benefits of the Proposed Rule, other than conclusory

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[1] Cetera Advisors LLC, Cetera Advisor Networks LLC, Cetera Financial Institutions LLC (Cetera Investment Services LLC), and Cetera Financial Specialists LLC.
[2] *See* 79 Fed. Reg. 17592 (Mar. 28, 2014)

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statements that it is FINRA's belief that the Proposed Rule will not impose "unsupportable administrative and implementation challenges"[3] on member firms. The lack of analysis is inconsistent with FINRA's commitment to economic impact assessment and evidence based rulemaking..[4]

New Threshold and Disclosure of Ranges

Representatives Should Be Permitted to Deduct Estimated Costs in the Threshold Calculation

Under the Proposed Rule disclosures are triggered if the recruited representative has received (or will receive) $100,000 or more of aggregate upfront payments or aggregate potential future payments in connection with transferring to the new member firm. Cetera supports raising the threshold for disclosure from $50,000 to $100,000 and the new language allowing for deduction of "...increased costs incurred directly by the registered person in connection with transferring to the member..."[5] in determining whether the threshold has been met. The proposing release states that transfer costs would include items such as "...relocation and various overhead costs (e.g. office equipment, new business cards and letterhead..."(at page 47). Because many of these direct expenses may not yet have been incurred when a receiving member firm is determining whether the threshold has been met, Cetera recommends that Supplementary Material 2243.04 be revised to allow for the deduction of estimated costs.

The Recruitment Compensation Range Requirement May Violate State Privacy Laws

Rather than requiring disclosure of the specific amount of recruitment compensation, the Proposed Rule allows for disclosure of ranges of recruitment compensation. While this is an improvement from what was proposed in Regulatory Notice 13-02, disclosure of ranges continues to raise privacy concerns. The proposing release states that FINRA "...does not agree that the proposal to require disclosure of recruitment compensation to former customers would encourage violations of federal or state privacy regulations because it does not require the disclosure of any information related to non-public customer personal information." (at page 42). While is it true that the notice and consent provisions of Regulation SP would not apply to disclosure of recruitment compensation because a registered representative is not a "customer," state privacy laws afford broader protection. For example, in California, privacy is a constitutional right[6], and it has been found that individuals have a legally protected privacy interest with respect to income earned in the private sector, see *Aaron Mintz v. Mark Bartelstein*

[3] File No. SR-2014-010, at page 64.
[4] *See*, Framework with Respect to Economic Impact Assessment of Proposed Rules http://www.finra.org/web/groups/industry/documents/industry/p346389.pdf (September 2013).
[5] Supplementary Material 2243.04
[6] California Constitution, Article 1, section 1.

and Associates, Inc. 906 F.Supp.2d 1017 (United States District Court, C.D. California)(2012). The disjunct between privacy laws in certain states and the Proposed Rule exposes member firms to potential privacy breach litigation claims.

The Proposed Disclosures Remain Complex and Operationally Challenging to Implement

The Ten Business Day Trigger for Written Disclosure Poses Operational Challenges

Under the Proposed Rule, the required disclosures must be made at the time a former customer is directly or indirectly induced to move his or her account to the receiving member firm. If the contact is oral, disclosures must be made orally at that time followed by written disclosures sent the earlier of ten business days from the date of the oral contact or at the time the account transfer approval documentation is sent. Requiring written disclosure within ten business days from oral contact will be extremely difficult to track and document, two critical elements in designing an appropriate supervisory system to monitor compliance with the Proposed Rule. Moreover, such a disclosure would be most effective and beneficial to the customer when he or she is truly considering the transfer. For these reasons, we recommend that FINRA revert to what was proposed in Regulatory Notice 13-02 and require written disclosure at the time the account transfer approval documentation is sent.

Two New Disclosure Requirements Cannot be Implemented as Written

The Proposed Rule requires disclosure of information that is, in most cases, not available to receiving member firms. First, the Proposed Rule requires disclosure of whether the former customer will incur costs in transferring his or her account to the receiving member firm (such as account termination or transfer fees). Secondly, the Proposed Rule requires disclosure of: i) whether any of the former customer's assets are not transferable to the receiving member firm, ii) whether the former customer may incur costs to liquidate and transfer those assets, or iii) whether the former customer may incur inactivity fees to leave those assets with the delivering member firm. However, in nearly all circumstances, neither the recruited representative nor the receiving member firm will have access to account termination costs or account level information of former customers. Consequently, member firms will invariably rely on the exception set forth in Supplementary Material 2243.03 and disclose that customers should ask the delivering member firm about the costs of transfer, portability and inactivity charges. For this reason, the Proposed Rule should be simplified to require that the member firm refer the client to the delivering member firm for this information.

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The New Reporting Requirement Imposes Operational Burdens and Unfairly Targets Independent Channel Broker-Dealers.

The Proposed Rule adds a new reporting requirement not previously proposed in Regulatory Notice 13-02. Under the proposal, a member firm will be required to file a report with FINRA with assumed compensation information of new registered representatives (with former customers) if the member firm reasonably expects the total compensation to be paid to a registered representative in his or her first year of employment or association to result in an increase over the registered person's prior year compensation by the greater of 25% or $100,000. In contrast to the disclosure provisions of the Proposed Rule, increased payout percentages must be included in determining if a report must be filed with FINRA.[7] Adoption of a different standard for disclosure, as opposed to reporting, introduces unnecessary operational complexity and overhead expense. Moreover, inclusion of payout percentage differences unfairly targets independent channel firms that generally have a higher payout percentage than full service firms because the registered representative assumes a greater proportion of overhead expenses.

Without any cost benefit analysis, the Proposing Release justifies the new reporting requirement by stating that it will be a data point in its risk-based examination program, help in rulemaking, and could mitigate potential sales practice violations because it "might encourage firms to give greater supervisory attention to the more lucrative compensation packages that will be reported to FINRA" (pages 17-18). At the same time, the proposing release notes that FINRA will review the reporting requirement to determine whether it should be eliminated or expanded (page 124). FINRA should consider whether the additional burdens placed on member firms by the reporting requirement when the same information could be obtained during examinations are outweighed by the potential benefits believed to exist.

The Proposed Disclosure Requirements May Burden Competition

The Proposing Release states that "FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act" (page 19). However, the disclosure requirements of the Proposed Rule will likely hinder representatives from seeking out the most appropriate member firm, for fear of losing customers who may misinterpret the representatives' motives for a transition. The final rule, and particularly the required disclosures regarding compensation, should be tailored so as not to compel registered representatives to remain with a member firm that is not the best fit for the representative or the customers.

[7] FINRA Rule 2243(c) states that in determining compensation for reporting purposes, not only must the member firm include recruitment compensation, but also "...increased payout percentages or other compensation..."

Conclusion

We fully support FINRA's aim to empower customers to make an informed decision when an advisor transfers between member firms. In furtherance of that goal, we support rules that would provide a concise, plain-English disclosure of potential conflicts of interest, which would spark meaningful conversation between the representative and the customer. As written, the Proposed Rule is overly complex, operationally onerous, and will have an anti-competitive effect in the industry, all of which could negatively impact investors. The Proposed Rule should be re-proposed taking into account these comments.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 913-789-8691.

Respectfully submitted,

Nina Schloesser McKenna
General Counsel