MARKETCOUNSEL®

April 18, 2014

VIA INTRANET COMMENT FORM

Kevin M. O'Neill, Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices)
File No. SR-FINRA-2014-010

Dear Mr. O'Neill,

MarketCounsel appreciates the opportunity to comment on FINRA's proposed Rule 2243, Disclosure and Reporting Obligations Related to Recruitment Practices. MarketCounsel and its affiliated law firm, the Hamburger Law Firm, have worked with hundreds of transitioning brokers who have been offered and/or received "enhanced compensation" for transitioning employment to another firm and others that have received additional compensation by their current firm to stay put and not move to another firm.

MarketCounsel believes that customers are entitled to disclosure of any material conflict of interest and compensation arrangements between brokers and their firms that incent any behavior over another are material to the customer. It is a common practice for broker-dealers to incentivize their representatives to stay with their firm by providing retention compensation, typically in the form of promissory notes that are forgiven by the broker-dealer over a period of up to eight years. This practice gives the representative an incentive to recommend clients stay with their current firm for the same conflicted financial reasons as representatives joining a new firm receiving recruitment compensation.

By focusing exclusively on recruitment compensation, we believe customers are given a false sense of full disclosure, while other conflicts remain undisclosed. Because we believe that compensation intended to encourage an action should be disclosed, MarketCounsel feels that retention compensation should be disclosed as well.

Furthermore, while the rule proposal requires the disclosure of compensation received by the representative, it does not require that all of the terms of that compensation by disclosed. As mentioned above, recruitment and retention compensation is often made as part of a note and repayment schedule that requires the representative to pay back any unearned portion if they leave prior to a certain date. In addition, many representatives are required to sign other restrictive covenants such as non-solicitation and non-competition provisions. Similar to retention compensation, these terms result in additional conflicts to customers that should be disclosed if recruitment compensation disclosures are required.

Finally, this rule appears to favor larger institutions for two primary reasons. First, the requirement for firms to report instances where they reasonably expect the total compensation paid to a representative to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000 will impact more independent broker-dealers than traditional wirehouses. Representatives that no longer need the heavy handed "oversight" of wirehouses often make the move to an independent broker-dealer or investment adviser. This reporting requirement assumes that more compensation may cause the representative to trade improperly. The opposite is actually true. Representatives at traditional wirehouses that earn less of the earned fees and commissions have the incentive to trade improperly. Second, a rule that favors retention bonuses and puts a stigma on recruitment bonuses favors the status quo, which naturally favors the largest institutions with the most representatives.

While we applaud the attempt to provide conflict disclosure to customers, we cannot fully support this proposal because of the areas discussed above. As proposed, customers will only get a partial picture of compensation conflicts of interest and large institutions would appear to benefit.

We once again appreciate the opportunity to comment on this proposed rule. As always, should you have any questions or require any additional information regarding any of the foregoing, we remain available at your convenience.

Best regards,
MARKETCOUNSEL, LLC

By: ______________________
Brian S. Hamburger
President and CEO

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Daniel A. Bernstein
Director of Research + Development