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FINRA Proposes Requirement to Deliver Educational Communication to Customers of a Transferring Representative

by Lawrence P. Stadulis and Peter M. Hong

The Financial Industry Regulatory Authority (FINRA) recently issued [Regulatory Notice 15-19](#) (Notice) seeking comments on a proposed rule that would require a member firm that hires or associates with a registered representative (recruiting firm) to provide an educational communication (Communication) to former retail customers who choose to transfer their accounts to the recruiting firm or are solicited by the recruiting firm to do so. The Communication would highlight the potential implications of transferring assets to the recruiting firm and suggest questions a customer may want to ask to make an informed decision. The recruiting firm would be required to provide the Communication at or shortly after initial contact with a former retail customer regarding the transfer of assets to the recruiting firm.

Content of Communication

The Communication is intended to prompt a former customer to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to obtain information regarding the potential implications of transferring assets to the recruiting firm. In addition, the Communication would suggest that the customer seek information to make an informed decision regarding:

- whether financial incentives received by the representative from the recruiting firm may create a conflict of interest;
- whether the customer may incur costs to liquidate assets that may not be directly transferrable to the recruiting firm or any inactivity fees to leave them with his or her current firm;
- potential costs related to transferring assets to the recruiting firm, including differences in the pricing structure and fees imposed between the customer's current firm and the recruiting firm; and
- differences in products and services between the customer's current firm and the recruiting firm.

Delivery of Communication

The proposed rule would require the Communication to be provided at or shortly after the initial contact with a customer regarding the transfer of assets to the recruiting firm. A

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written Communication must accompany any initial contact in writing, or a hyperlink to the Communication if the initial contact is made electronically. If the initial contact is made orally, the Communication must be sent to the customer within three business days of contact or with any other communication sent by the recruiting firm to the former customer in connection with a potential transfer of assets, whichever is earlier. In addition, the recruiting firm or representative must inform the former customer during the initial oral contact that he or she will be receiving a document that contains important considerations in determining whether to transfer assets to the recruiting firm. To the extent a former customer initiates the transfer of assets to the recruiting firm prior to any contact by the recruiting firm or the transferring representative, the proposed rule would require the Communication to be provided with the account transfer approval documentation.

The requirement to provide the Communication would continue to apply for six months following the date that the registered representative begins employment or associates with the recruiting firm. The delivery requirement would not apply when a former customer expressly states that he or she is not interested in transferring assets to the recruiting firm. However, if the former customer subsequently decides to transfer assets to the recruiting firm without further contact within the six-month period, then the Communication must



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accompany the account transfer approval documentation.

Although the proposal does not specify supervisory procedures, the Notice states FINRA's expectation that firms would implement a system reasonably designed to achieve compliance with the Communication delivery requirements through training, spot checks, certifications or other measures.

Request for Comment

The comment period for the proposed rule expires July 13. ■

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