COMMONWEALTH *financial network*®

**VIA ELECTRONIC MAIL**

July 13, 2015

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 15-19: Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative

Dear Ms. Asquith:

FINRA Regulatory Notice 15-19 requests comment on a proposed rule that would "require delivery of a FINRA-created educational communication focused on key considerations for a customer who is contemplating transferring assets to the recruiting firm" (the "Proposed Rule").

The Proposed Rule to require delivery of a uniform, FINRA-created disclosure document represents a substantial improvement over the initial proposal filed with the SEC in March 2014 (the "Initial Proposal"), particularly with respect to the many operational and practical aspects of the Initial Proposal that were the subject of Commonwealth's previous comment letter.

Nevertheless, FINRA's continued insistence that delivery of the educational communication must occur "at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm", as proposed, is not practical or possible for any member firm to reasonably enforce. If FINRA truly "remains concerned that retail customers may not be aware of important factors to consider in making an informed decision whether to transfer assets to their transferring registered representative's new firm", and believes that a rule requiring delivery of a FINRA-created educational communication is the solution to its concern, then it is vital that FINRA modify the delivery requirements of the Proposed Rule in a manner that will permit firms to implement processes reasonably designed to ensure delivery of the communication, as opposed to the current proposal that will merely set firms up for failure, as discussed more fully below.

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 registered representatives ("RRs") who are independent contractors conducting business in all 50 states. Commonwealth appreciates the opportunity to comment on the Proposed Rule.

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**Content of Communication**

Commonwealth agrees that customers should understand the potential implications of a decision to transfer assets to a new firm, particularly when a RR will receive material, incentive-based compensation from their new firm that creates a material conflict of interest, such as signing bonuses and other cash payments that are intended to provide a financial incentive to encourage RRs to switch firms. Provided that the educational communication is uniform and general in nature as described in the Proposed Rule, and is designed to help foster inquiries by such customers to the transferring RR when and as determined important or relevant by the respective customer, Commonwealth agrees with this approach.

**Delivery of Communication**

As currently drafted, the triggers and methods of delivery of the educational communication under the Proposed Rule cannot be reasonably implemented or enforced by member firms.

<u>"Time of First Contact" Concept Unworkable</u>

The requirement that the educational document must be provided "at or shortly after the time of first contact with a customer regarding the transfer of assets to the recruiting firm" is unworkable for several reasons. For example, the "time of first contact with a customer regarding the transfer of assets to the recruiting firm" could actually occur *before* the RR leaves their current firm. It is not unusual for an RR to contact customers to inform them of the RR's intention to change firms and to discuss the potential for the customer to transfer assets to the RR's new firm. In such event it would stand to reason that the RR's current firm would be responsible for enforcing the requirements of the Proposed Rule since the RR is not yet under the supervisory jurisdiction of the recruiting firm. It is not reasonable to expect the RR's current firm to have any knowledge of that "first contact" or the means to enforce the Proposed Rule's delivery requirements as RRs often do not provide their firm with advance notice of their departure.

Additionally, firms will not know when an RR has actually had "the first contact" with a customer as required by the Proposed Rule. If the first contact is in writing, whether in paper format or electronically, such individual client communications would likely constitute "correspondence" under FINRA Rule 2210 and as such would not require prior approval by a supervising principal. Therefore, depending upon the firm's correspondence review procedures, which are subject to the supervision and review requirements of FINRA Rules 3110(b) and 3110.06 through 3110.09, and which do not require review by a supervising principal of each written piece of correspondence, it is not reasonable to expect firms to know when such communications occurred for purposes of enforcing the Proposed Rule's "time of first contact" delivery requirements.

Further, if the first contact is oral, the Proposed Rule requires that the educational communication "be sent to the customer within three business days 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." This concept too is unworkable. Firms will not know the time of first oral contact between

an RR and a customer for any purpose, let alone for the specific purpose of discussing the transfer of the customer's assets to the recruiting firm. Moreover, the Proposed Rule would not only require firms to somehow know when the time of first oral contact between the RR and a customer occurred, but would require the delivery of the educational communication "within three business days 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." Without knowing the date of first contact with a customer regarding the transfer of assets to the recruiting firm, whether in writing or oral, firms could not reasonably comply with the "within three business days 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" component of the Proposed Rule's delivery requirement.

FINRA states that it "expects that firms can implement a system reasonably designed to achieve compliance with the delivery requirements through training, spot checks, certifications or other measures." We disagree. Firms could provide various means of training, obtain regular certifications from RRs and conduct spot checks of written communications, and there would still be no reasonable assurance that the educational communication was actually delivered when and as required under the Proposed Rule. Firms will not be able to conduct a "spot check" for delivery of the communication within any specific timeframe if the first contact its oral, since firms will have no way of knowing when the first oral contact occurs. If the first contact is in writing (whether hard copy or electronic), "spot checks" would be insufficient to reasonably ensure compliance with the Proposed Rule. Like many firms, Commonwealth employs Lexicon and random sampling techniques to review correspondence. To expect firms to determine whether the specific communication under review was "the first contact with a customer regarding the transfer of assets to the recruiting firm" would be impractical, enormously time consuming, inefficient and unnecessarily costly.

FINRA must recognize that employing a delivery obligation that is tied to "the first contact with a customer regarding the transfer of assets to the recruiting firm" is not reasonably enforceable by firms *regardless* of the amount of training and oversight firms might employ in an effort to comply with the Proposed Rule; will not achieve FINRA's goal to ensure that firms deliver the educational communication to customers in accordance with the Proposed Rule's delivery requirements; and will serve only to set firms up for failure to reasonably comply with the Proposed Rule.

As an alternative to the proposed delivery requirements, FINRA should simplify the Delivery of Communication requirement to correspond with the time of delivery of the account transfer documentation, whether that be at the time the RR seeks to obtain the client's signature on an account transfer (ACAT) form, or in the event of an authorized block transfer via negative consent, the educational communication should be included along with the negative consent letter that is mailed to the customer in advance of initiating the block transfer. The ACAT and block transfer events that would cause an account to be transferred to the recruiting firm are within the reasonable knowledge and control of member firms, and therefore compliance with the delivery requirements of the educational communication during either of those events are subject to reasonable implementation and supervision by member firms.

"Absent Contact" Concept Unworkable

Much like the concept of a delivery obligation that is triggered following "the first contact with a customer regarding the transfer of assets to the recruiting firm", the concept that a firm would know when the transfer of an account was the result of *no* contact with the customer, where the customer learns that an RR has changed firms from some other source and decides on their own to transfer the account to the RR's new firm, is equally unworkable. The "absent contact" concept would require firms to delineate between "first contact" and "no contact" with a customer for purposes of determining the timing and means of their delivery obligation.

As an alternative, rather than provide for delivery of the educational communication along with the account transfer documentation *only* in instances where there is no contact with the customer, FINRA should modify the Proposed Rule to provide for delivery of the educational communication along with the account transfer documentation *in all cases* in which a RR transfers to a new firm during the requisite period. While FINRA has proposed a period of six months following the date that the RR associates with the recruiting firm as the time period during which the educational communication must be provided to customers, FINRA should modify the proposal to require delivery of the communication for a period of 90 days following the date the RR associates with the recruiting firm, which period is more representative of the amount of time it takes RRs to change firms and transfer customer accounts.

The modification above would also make unnecessary the additional complexity of the Proposed Rule that would require firms to somehow know or learn that a customer "expressly states that he or she is not interested in transferring assets to the recruiting firm", only to subsequently change their mind later in a manner that would trigger the delivery obligation. FINRA should adopt a much simplified requirement that firms must deliver or cause the delivery of the educational communication to a customer who transfers their account to the RR's new firm within 90 days following the date that the RR associates with the recruiting firm, *without* the multiple and myriad complexities of the "if this, then that" delivery requirements of the Proposed Rule.

**Reporting to FINRA**

We applaud FINRA's decision to remove the reporting obligations in the Initial Proposal that would have been a burdensome requirement for firms without providing any meaningful benefit to investors.

**Conclusion**

We do not agree with FINRA's assertion that "the proposal is an effective and efficient alternative to the initial proposal… while reducing the direct costs on firms to provide the educational communication and the operational challenges of the initial proposal." While the concept of a FINRA-created educational communication represents a substantial improvement over the Initial Proposal, the timing and nature of the Delivery of Communication requirements in the Proposed Rule will prove to be anything but "effective and efficient."

There is no benefit to employing a complex series of "if this, then that" triggers for delivery that are dependent upon firms to know exactly when "the time of first contact" or "no contact" with a customer regarding the transfer of assets to the recruiting firm has occurred. Determining the timing and means of delivery of the communication in accordance with the various triggers described in the Proposed Rule as discussed above will not be effective and will in fact be grossly inefficient for member firms to make reasonable efforts to comply.

FINRA should therefore modify the Proposed Rule in a straightforward manner to require member firms to deliver or cause the delivery of the educational communication along with the requisite account transfer documentation to a customer who transfers their account to the RR's new firm within 90 days following the date that the RR associates with the recruiting firm.

We appreciate the opportunity to comment on the Proposed Rule and we urge FINRA to modify the Proposed Rule as discussed above.

Respectfully,
COMMONWEALTH FINANCIAL NETWORK

Paul J. Tolley
Senior Vice President
Chief Compliance Officer