



March 5, 2013

Exclusively via e-mail to pubcom@finra.org

Ms. Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Comments on FINRA’s Proposed Rule Requiring Disclosures Relating to Recruitment Compensation Practices (Regulatory Notice 13-02) (the “Proposed Rule”)

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Proposed Rule.²

I. SUMMARY OF THE PROPOSED RULE – IN GENERAL

The Proposed Rule requires a member firm that provides (or agrees to provide) a registered person “enhanced compensation” in connection with recruiting the registered person to join the member firm to disclose the details of such enhanced compensation to any former client of the registered person who (1) is individually contacted (either orally or in writing) regarding the registered person’s move to the new member firm; or (2) seeks to transfer an account to the registered person’s new member firm.

Under the Proposed Rule the term “enhanced compensation” is defined as compensation paid in connection with the transfer of securities employment to a member firm other than the compensation normally paid by the member firm to its established registered persons. Enhanced compensation includes signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance and similar arrangements, paid in connection with the transfer of securities employment to a member firm.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

² We anticipate that a number of our member firms will be filing individual comment letters on the Proposed Rule, reflecting a range of views on, among other things, the appropriate level of detail in the proposed disclosures.

II. DISCLOSURE OF POTENTIAL MATERIAL CONFLICTS OF INTEREST

SIFMA understands that the Proposed Rule is intended to foster investor protection by requiring broker-dealers to disclose certain potential conflicts of interest that may arise in connection with a registered representative's receipt of recruiting related bonus payments. Consistent with SIFMA's support for a uniform fiduciary standard for broker-dealers and investment advisers, SIFMA has a long-standing record of support for disclosure to investors of potential material conflicts of interest.³ Disclosures of potential material conflicts of interest can help investors make informed decisions and foster strong and vibrant securities markets.

SIFMA supports disclosure of information that is sufficient to inform an investor of the potential conflicts of interest when it may arise in connection with recruiting-related bonus payments. The potential conflict identified in the FINRA proposal – which was copied verbatim from the SEC's 2009 open letter to broker-dealer CEOs⁴ – arises where a registered representative will receive enhanced compensation for hitting increased commission targets, which could motivate the registered representative to engage in trading activity that generates commissions, but is not necessarily in the clients' interest.

In the context of recruiting-related bonus payments, the most important and relevant information for the client is to understand the potential conflict associated with the payment. That is the answer to, "Why are you telling me this?" Once the client understands the practical and personal import of the potential conflicts, the client can then make an informed decision about whether to switch firms with their broker. Accordingly, SIFMA believes that disclosure about the potential conflicts themselves should be the centerpiece of the Proposed Rule. In order to ensure that the message is not lost, and consistent with our prior statements regarding conflict disclosure, SIFMA believes this disclosure should be concise, direct and written in plain English.⁵ As SIFMA has stated previously, SIFMA believes that at key moments in the investment process investors need clear, targeted and understandable disclosure on key factors for their investment decisions.⁶ Simple, plain-English disclosures permit investors to make informed choices.⁷

³ See, e.g., SIFMA comments on FINRA Regulatory Notice 10-54 [available at: <http://www.sifma.org/issues/item.aspx?id=22482>] and SIFMA comments on SEC rulemaking under Dodd-Frank Section 913 [available at <http://www.sifma.org/issues/item.aspx?id=8589934675>].

⁴ See <http://www.sec.gov/news/press/2009/2009-189.htm>.

⁵ See generally SIFMA comments on SEC rulemaking under Dodd-Frank Section 913 [available at <http://www.sifma.org/issues/item.aspx?id=8589934675>].

⁶ See SIFMA comment letter on SEC Financial Literacy Study [available at: <http://www.sifma.org/issues/item.aspx?id=8589938025>].

⁷ SEC Commissioner Paredes recently stated at the 2013 SEC Speaks Conference: "In fashioning the disclosure regime at the core of the federal securities laws, we must account for the fact that too much disclosure, particularly when it is too complex, can be counterproductive. We need to recognize the impact on investor decision making as investors find themselves having to confront expanding volumes of information, some of which can be a challenge to understand with the kind of clarity that one might hope for. It would be better for investors to be provided with shorter, more manageable SEC filings, for example, instead of the lengthy documents they receive today. . . . At a minimum, going forward, we should not

III. SIFMA POSITION ON CERTAIN SPECIFIC ISSUES

A. *FINRA SPECIFIC REQUEST FOR COMMENT*

In addition to expressing SIFMA's support for disclosure to investors of potential material conflicts of interest, SIFMA would like to comment on the following question specifically raised in Regulatory Notice 13-02:

- ***Providing Disclosures While at Previous Firm:*** FINRA asks whether a registered representative should be required to disclose to investors the details of any recruiting-based enhanced compensation while the registered person is still associated with his/her prior firm. SIFMA believes imposing this type of disclosure requirement is unworkable from an operational and supervisory standpoint. The registered representative's new firm has no effective mechanism to supervise compliance with the disclosure requirement because the registered person is not yet associated with the new firm.

B. *MODEL DISCLOSURE*

SIFMA believes that investors and the securities industry would benefit if FINRA works with the industry to create a model approach that clearly articulates appropriate disclosure for enhanced compensation under the Proposed Rule. A model approach will facilitate member firm compliance with the Proposed Rule and will make it easier for investors to understand and compare disclosures from different firms.⁸

add to the problem by expanding what companies must disclose to include information that is not material to evaluating a company's business. Whatever is disclosed should be presented, when practicable, in a more accessible, straightforward manner — such as charts, graphs, tables, and summaries — so that the information is more digestible and understandable. A simpler presentation can make it easier for investors to focus on and process the information that matters most.” [available at <http://www.sec.gov/news/speech/2013/spch022213tap.htm>].

SIFMA noted in its comment letter on FINRA Regulatory Notice 10-54 that “[the] RAND Corporation ... observed that there continues to be investor confusion despite existing disclosure requirements. Retail clients will benefit from disclosure that is concise, direct and avoids detail that overwhelms key facts.” [available at: <http://www.sifma.org/issues/item.aspx?id=22482>].

⁸ Templates have been effectively used for compliance with Regulation S-P (<http://www.sec.gov/divisions/marketreg/tmcompliance/modelprivacyform-secg.htm>), anti-money laundering compliance (<http://www.finra.org/Industry/Issues/AML/p006340>), and breakpoints disclosures (<http://www.finra.org/Industry/Issues/Breakpoints/p010539>).

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IV. CONCLUSION

SIFMA has consistently supported meaningful disclosures of potential material conflicts of interest. SIFMA reiterates its support for concise, direct and plain English disclosures of information that is sufficient to inform an investor of the potential material conflicts of interest that may arise in connection with recruiting related bonus payments.

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SIFMA appreciates the opportunity to comment on the Proposed Rule. SIFMA would be pleased to discuss any of these points further, and to provide additional information you believe would be helpful. Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira D. Hammerman". The signature is fluid and cursive, with the first name "Ira" and last name "Hammerman" clearly distinguishable.

Ira Hammerman
Senior Managing Director and
General Counsel