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July 24, 2015

Via e-mail (pubcom@finra.org)

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

Re: Comments on FINRA's Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative (Regulatory Notice 15-19) (the "Proposed Rule")

Dear Ms. Asquith:

HD Vest Investment Services ("HD Vest") appreciates the opportunity to comment on Regulatory Notice 15-19 ("RN 15-19" or the "Proposed Rule"), which would require member firms to deliver a FINRA-created educational communication (the "Educational Communication") to "former customers" of a transferring representative.[1] HD Vest is a registered broker-dealer and FINRA member with approximately 4,500 registered representatives nationwide. The Firm actively recruits new registered representatives into the securities business (*i.e.*, individuals who have not previously been registered), and also recruits representatives from other firms.

I. INTRODUCTION

HD Vest opposes the current proposal because all firms should not be forced to provide general disclosures that may not be relevant to their transferring representatives' or customers' circumstances. The Proposed Rule should not apply to firms that do not pay material compensation to induce representatives to transfer firms. Moreover, clients already receive vast information about fees and nearly all account transfers currently occur without any issues. Therefore, the other considerations the Educational Communication addresses do not represent important systemic problems that warrant an entirely new and expensive disclosure regime. The Proposed Rule is far too complex and impractical, and firms will experience significant operational challenges trying to comply with it. On the other hand, it will not significantly enhance consumer protection. HD Vest hopes that FINRA will consider these comments constructively, and withdraw or significantly alter the Proposed Rule.

[1] FINRA Regulatory Notice 15-19 (May 2015) ("RN 15-19"), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-19.pdf.

II. BACKGROUND

FINRA developed the current proposal in response to its previous efforts to design disclosure around recruiting compensation. This section briefly outlines how this rule proposal has evolved over the past three years.

The Prior Proposal

FINRA initially proposed recruiting compensation disclosure requirements in Regulatory Notice 13-02 (Recruitment Compensation Practices) ("RN 13-02") and subsequently filed proposed FINRA Rule 2243 with the Securities and Exchange Commission ("SEC") in March 2014.

The disclosure approach proposed in RN 13-02 was designed to serve as an individualized disclosure requirement that would **not** apply to recruiting firms that paid a transferring representative less than $50,000 in enhanced compensation. RN 13-02 noted that "[t]he *de minimis* exception for enhanced compensation under $50,000 is intended to allow firms to offset a registered person's ordinary costs in the transition process, since such compensation does not raise the same degree of conflicts of interest as more lucrative enhanced compensation arrangements."[2] HD Vest initially supported the balanced approach in this rule proposal; a one-size-fits-all approach was never advisable.[3]

Proposed Rule 2243 increased the *de minimis* exception for recruitment compensation to $100,000, but it also dramatically expanded the scope of the disclosure requirements proposed in RN 13-02.[4] For example, in addition to disclosure to former customers, firms would have had a reporting obligation to FINRA – a requirement unrelated to investor evaluation of conflicts of interest.[5] Commenters were very concerned about the implications of Proposed Rule 2243, including significant operational challenges and the effectiveness of the disclosures.[6] FINRA withdrew Proposed Rule 2243 in June 2014.

The Current Proposal

Proposed Rule 2272 would require recruiting firms to deliver the Educational Communication to transferring representatives' former customers for six months following the

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2 FINRA Regulatory Notice 13-02 (Jan. 2013) at 5 ("RN 13-02"), available at https://www.finra.org/sites/default/files/NoticeDocument/p197599.pdf.

3 *See* HD Vest Investment Services Comment Letter regarding Regulatory Notice 13-02 (Recruitment Compensation Practices) (Mar. 5, 2013), available at http://www.finra.org/sites/default/files/NoticeComment/p220093.pdf.

4 *See* SEC, *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2243*, Release No. 34-71786, at 47 (March 24, 2014) ("Proposed Rule 2243"), available at https://www.sec.gov/rules/sro/finra/2014/34-71786.pdf.

5 *See generally id*.

6 *See* SIFMA, Comment Letter on FINRA Proposed Rule Change regarding Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) (Apr. 17, 2014) at 3, available at http://www.sifma.org/issues/item.aspx?id=8589948662.

date the representative associates with a new firm.[7] The Educational Communication contains a general recruiting compensation disclosure, which is intended to highlight certain potential conflicts of interest that *may* arise *if* recruiting firms compensate representatives when they transfer firms. The other disclosures raise select considerations common to all investors who consider transferring an account between firms. The Educational Communication does not actually provide customers the information they need to make a decision, but rather "is intended to prompt a former customer to make further inquiries of the transferring representative (and, if necessary, the customer's current firm), to the extent that the customer considers the information important to his or her decision-making."[8] The five considerations are presented as follows:

1. Could financial incentives create a conflict of interest for your broker?
2. Can you transfer all of your holdings to the new firm? What are the implications and costs if you can't?
3. What costs will you pay—both in the short term and ongoing—if you change firms?
4. How do the products at the new firm compare with your current firm?
5. What level of service will you have?

The timing of the Educational Communication depends on whether the recruiting firm or transferring representative "attempts to induce" the former customer to transfer assets to the recruiting firm orally or in writing.[9] If there is a written attempt to induce, then the Educational Communication must be delivered at the time of the "first individualized contact with a former customer."[10] For example, if the recruiting firm or the transferring representative contacts the former customer in writing (*i.e.*, by sending a letter) then the Educational Communication must accompany the first written communication.[11] If the recruiting firm or the transferring representative emails the former customer then the first email may hyperlink directly to the Educational Communication.

If there is an oral attempt to induce, the former customer must be told during the conversation that they will receive the Educational Communication which includes considerations about deciding whether to transfer their assets to the member firm, and the Educational Communication must be sent by the member firm within three business days. If, however, the transferring representative or member firm send other correspondence to the former customer related to transferring assets before this three business day period expires, the Educational Communication must accompany that correspondence.

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7 *See* Proposed Rule 2272(a).

8 *See* RN-15-19, *supra* note 1, at 3.

9 Proposed Rule 2272(a), *supra* note 7.

10 *See* Proposed Rule 2272(b)(1).

11 *See* Proposed Rule 2272(b)(1)(a).

III. OPERATIONAL CHALLENGES WILL MAKE COMPLIANCE BURDENSOME AND COSTLY, IF NOT IMPOSSIBLE

A. Transferring Representatives and Recruiting Firms May Not Have Access To Former Customers' Information.

In order to send the Educational Communication, recruiting firms would need to obtain information about the transferring representatives' former clients, including a client list and addresses. The Proposed Rule seems to assume that this information is available to recruiting firms as a matter of course before the former customer actually becomes a client of the new firm. However, representatives are not required to – and due to Regulation S-P and contractual limitations may not be permitted to – retain or share former customers' contact information when they switch firms.

1. Regulation S-P May Prevent Firms From Obtaining Information Necessary to Comply With the Proposed Rule.

If FINRA proceeds with the Proposed Rule, it needs to clarify how firms are supposed to comply consistent with Regulation S-P ("Reg. S-P"). Reg. S-P restricts firms' ability to share nonpublic personal information ("NPPI") about customers with unaffiliated third-parties unless customers have been notified and given the opportunity to opt-out of this disclosure. Reg. S-P may prevent a transferring representative from sharing former customers' NPPI with recruiting firms. Without this information, however, it would be impossible to comply with the Proposed Rule.

Reg. S-P defines NPPI to include (i) personally identifiable financial information (PIFI); and (ii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any PIFI that is not publicly available information.[12] The fact that an individual is or has been a firm's customer or has obtained a financial product or service from a firm is PIFI.[13] Under certain circumstances, transferring representatives could violate Reg. S-P if they inform the recruiting firm that an individual is a customer of the representatives' former firm and share the customer's address. Without this information, however, the recruiting firm will not be able to determine who must get the Educational Communication mailing, and will not be able to perform the mailing within the time frames and other requirements of the Proposed Rule.

The Proposed Rule does not provide transferring representatives and recruiting a firms a safe harbor from Reg. S-P to allow representatives to retain customer NPPI and provide it to recruiting firms to facilitate the Proposed Rule's required mailings. Although the Protocol for Broker Recruiting ("Protocol") allows representatives to retain certain NPPI when they leave, the SEC has indicated that the "information may be used at the representative's new firm *only by the*

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[12] 17 C.F.R. § 248.3(t)

[13] 17 C.F.R. § 248.3(t)(3)(u)(2)(C)

representative, and only for the purpose of soliciting the representative's new clients."[14] In any event, not all firms have joined the Protocol so it cannot be relied upon globally to facilitate compliance with the mailing requirements.

This situation is similar to Regulatory Notice ("RN 07-36"), in which FINRA clarified that "in establishing due diligence procedures [to supervise transferring representatives], *NTM 07-06* does not recommend, nor does it suggest, that a firm obtain nonpublic personal information about any customers the prospective registered representative may seek to bring to the new firm."[15] Similarly, in Regulatory Notice 15-22, FINRA specified that, in facilitating bulk account transfers, "no personal confidential customer information (e.g., social security numbers) may be provided to the receiving introducing or clearing firm, as applicable, unless the sharing of such information is in compliance with SEC Regulation S-P . . . ."[16] The Proposed Rule does not adequately address the fact that representatives and firms could be subject to enforcement for sharing the very information the Proposed Rule assumes is available to the new firm.[17] Before moving forward, FINRA needs to clarify the interaction between recruiting firms' need to identify former customers and send them mailings *before* they become customers, and Reg. S-P's general prohibition against recruiting firms obtaining information about a representative's former customers.

2. Transferring Representatives Contractual Obligations May Prevent Them From Sharing Customer Information With Recruiting Firms.

Even if sharing information is permitted under Reg. S-P, transferring representatives may be prohibited by contract from taking customer NPPI when they leave their prior firm. This would again preclude transferring representatives from providing recruiting firms the identify of former customers and contract information necessary to comply with the Proposed Rule. In order to move forward, FINRA would need to make clear that the Proposed Rule supersedes any private contractual restrictions that firms have prohibiting representatives from taking customer

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14 SEC, *Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information*, Exchange Act Rel. No. 57427, 73 Fed. Reg. 13692, 13702 n.91 (Mar. 13, 2008) (emphasis added). In this release, the SEC proposed rules that would universally have allowed (but not required) firms to permit departing representatives to provide their new firm the name and contact information of former customers; however, the proposal was never adopted.

15 FINRA Regulatory Notice 07-36 (FINRA clarifies guidance relating to SEC Regulation S-P under Notice to Members 07-06, Supervision of Recommendations after a Registered Representative Changes Firms) (Aug. 2007) ("RN 07-36"), available at https://www.finra.org/sites/default/files/NoticeDocument/p036445.pdf.

16 FINRA Regulatory Notice 15-22 (Discretionary Accounts and Transactions) (June 2015) ("RN 15-22") at 10, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notice_15-22.pdf.

17 *See SEC Initial Decision In the Matter of NEXT Financial Group, Inc.*, File No. 3-12738 (Jun. 18, 2008), available at https://www.sec.gov/litigation/aljdec/2008/id349jtk.pdf; *see also SEC Order Instituting Administrative and Cease and Desist Proceedings In the Matter of NEXT Financial Group, Inc.*, File No. 3-12738 (Aug. 24, 2007) available at https://www.sec.gov/litigation/admin/2007/34-56316-o.pdf; *HFP Capital Markets, LLC, Letter of Acceptance Waiver and Consent No. 20090193202-01* (Mar. 26, 2012), available at http://disciplinaryactions.finra.org/Search/ViewDocument/31596.

information. This is a significant step with widespread implications that counsels strongly against FINRA proceeding with the Proposed Rule.

Furthermore, if a transferring representative was subject to a non-solicitation agreement and the recruiting firm mailed the Educational Communication to a former customer, the "inducement" standard would let the former firm argue that the transferring representative breached his or her agreement by attempting to induce the customer to transfer firms. This could provoke a lot of litigation. If FINRA decides to proceed with the Proposed Rule, HD Vest supports SIFMA's suggestion that it should clarify that the Proposed Rule only governs disclosure obligations, and delivery of the Educational Communication is not evidence that a former customer has been solicited.[18]

B. It is Not Practical to Supervise Communications With a Representative's Former Clients Before They Even Establish Accounts.

Assuming that recruiting firms can obtain the baseline information necessary to perform the required mailings, to comply with the Proposed Rule firms would still have to establish new compliance programs to somehow track all of the communications transferring representatives may have with former customers. HD Vest does not have any existing infrastructure or systems it can leverage, and wholly new reporting systems would need to be created. Firms would need to establish written supervisory procedures and related supervisory control procedures, and ongoing additional dedicated compliance resources. Firms would also be challenged to facilitate compliance with complicated requirements by brand new representatives who are just joining the firm. The costs of the Proposed Rule would be substantial, and many of those costs are caused by the failure to take into account practical considerations associated with trying to monitor formal and informal communications.

Under the Proposed Rule, firms would be required to deliver the Educational Communication if a transferring representative has attempted to induce a former customer to transfer assets to the new firm – orally or in writing. The only way recruiting firms will know this is if the contact is self-reported. Most firms will have to rely on representatives' voluntary compliance because firms have no way to track telephone calls or whether a representative held an in-person meeting.

If a representative reports an oral contact with a former customer, firms will have to make subjective determinations regarding whether the representative attempted to induce the former customer based on second-hand accounts of the conversation. Without guidance from FINRA regarding what it means to "attempt to induce," firms will have to use their own judgment on a case-by-case basis. Evaluating every contact with a former customer will be extremely burdensome.

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[18] *See* SIFMA Comment Letter Regarding FINRA Regulatory Notice 15-19 (July 13, 2015) at 10, available at https://www.finra.org/sites/default/files/notice_comment_file_ref/15-19_sifma_comment.pdf.

SIFMA highlighted several of these challenges in its comment letter to Proposed Rule 2243, when it noted:

> Firms will face significant challenges creating a supervisory system that will be reasonably designed to monitor the fluid and dynamic oral communications between representatives and customers. For example, there are potential challenges associated with pinpointing the exact date when a communication may morph into a solicitation to transfer assets. The challenge is enhanced by the fact that these communications may occur prior to the representative joining the new member firm. Indeed, firms may reach investors that may have already expressed a desire to remain with the current member firm – thereby creating needless confusion rather than providing useful information.[19]

The foregoing demonstrates that trying to supervise varied communications – and then having to determine subjectively whether there was an "attempt to induce" – is impractical if not impossible.

C. If the Rule is Adopted Delivery Deadlines Should be Lengthened.

The proposed time frame to deliver the Educational Communication is insufficient. Assuming no written communications are sent between an oral "attempt to induce," firms would have three business days to send the Educational Communication. As outlined above, before determining whether a mailing is required, firms will have to: (1) gather the necessary customer information (in compliance with Reg. S-P); (2) obtain information from representatives about informal communications they might have had with customers; and (3) evaluate whether a there was an "attempt to induce." This will be a very labor intensive process. Faced with these significant challenges, firms will need ample time make these evaluations. Three days is simply not enough.

If the requirement is adopted, Firms should be afforded at least ten business days to deliver the Educational Communication. Alternatively, as suggested below, FINRA should allow firms the flexibility to deliver the Educational Communication with account opening documents if the client decides to transfer firms.

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The challenges identified above would require firms to incur significant costs to implement a new compliance apparatus that is reasonably designed to comply with the Proposed Rule. Compliance with Proposed Rule will divert compliance resources away from other more significant compliance initiatives with greater customer benefit. The cost to firms is clearly greater than any perceived benefits investors would realize by receiving the Educational Communication.

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[19] SIFMA Comment Letter on FINRA Proposed Rule Change Regarding Rule 2243, *supra* note 6, at 3.

IV. FIRMS THAT DO NOT PAY MATERIAL RECRUITMENT COMPENSATION SHOULD NOT HAVE TO DELIVER THE EDUCATIONAL COMMUNICATION

The rationale for requiring disclosure of a potential conflict of interest related to recruitment compensation is very different from disclosing the possibility that an investor might experience portability or other issues or costs when transferring assets. Recruiting compensation disclosures are only potentially helpful for investors if their representative is actually receiving material transition payments. If that is not the case, an investor will be confused as to why they are receiving this disclosure. When generally discussing the topic of disclosure reform, Commissioner Daniel M. Gallagher rightly noted, "from an investor's standpoint, excessive illumination by too much disclosure can have the same effect as obfuscation — it becomes difficult or impossible to discern what *really* matters."[20] Therefore, if firms are not paying transferring representatives significant recruitment compensation, they should not have to deliver the Educational Communication, or at least not in its current form.

V. ADDITIONAL DISCLOSURE OF GENERAL EDUCATIONAL INFORMATION ON ACCOUNT TRANSFERS IS UNNECESSARY AND POTENTIALLY CONFUSING

The disclosures in the Educational Communication regarding portability of assets, costs, and availability of products and services are potentially relevant to investors anytime they transfer assets among firms – not just when a former customer follows a representative to a new firm. Some individuals in FINRA's test group cited in RN 15-19 might have found these disclosures helpful when they were asked in isolation. FINRA did not specify whether any members of the test group found some of the disclosures more meaningful than others, or whether they would have found them helpful if the issues were irrelevant to their situation.

FINRA has not cited any evidence of systemic problems with the account transfer process or current disclosure regime that justifies the substantial costs associated with the proposed Educational Communication. On the contrary, the transfer process works well most of the time. Before establishing another burdensome disclosure requirement that may or may not add marginal incremental value, FINRA should establish that a problem actually exists.

Portability

The "portability" disclosure in the Educational Communication notes that some products may not be transferrable if an investor transfers assets to a new firm. While this may be true in some instances,[21] there is no evidence of widespread problems transferring securities (especially among the large number of firms that primarily do business in mutual funds). In fact, the

20 *See* Daniel M. Gallagher, *Remarks at the 2nd Annual Institute for Corporate Counsel* (Dec. 6, 2013), available at http://www.sec.gov/News/Speech/Detail/Speech/1370540462287.

21 *See* SEC Investor Publication *Transferring Your Brokerage Account: Tips on Avoiding Delays* ("SEC Investor Publication Regarding Transferring Brokerage Accounts") available at http://www.sec.gov/investor/pubs/acctxfer.htm (e.g., "securities sold exclusively by your old firm; mutual funds or money market funds not available at the new firm; limited partnerships that are private placements; annuities; or bankrupt securities.").

evidence is to the contrary. The SEC has found that "[m]any investors transfer their accounts from one brokerage firm to another **without a hitch**."[22] FINRA has similarly noted that "[w]hile the [transfer] process **generally runs smoothly for the vast majority of thousands of accounts transferred each year**, there are times when delays occur and investors pose questions."[23] Delays might occur for any number of reasons (including reasons not addressed in the Educational Communication), but this is not indicative of a systemic problem with the transfer process. In fact, the most common securities including, but not limited to, equities, corporate and municipal bonds, unit investment trusts, mutual funds, options, annuities, and cash are readily transferable among firms through the Automated Customer Account Transfer Service ("ACATS") system.[24]

Additionally, there is no evidence that current disclosure regarding account transfers is inadequate. On the contrary, there is already a comprehensive disclosure regime in place governing the account transfer process.[25] FINRA Rule 11870 already mandates written disclosures carrying firms and/or receiving firms must promptly provide customers with respect to the transfer and disposition of "nontransferable assets," as well as other matters that may arise during the transfer process.[26]

In addition, RN 07-06 already provides that: "[i]f the new firm is unable or unwilling to service a customer's mutual fund or variable product, the new firm or the registered representative should advise the customer of this fact, as well as the options the customer may have to continue to hold the investment at the customer's prior firm, before recommending that the customer liquidate or surrender the investment."[27] This is occurs as a matter of course in servicing client accounts, and is the appropriate way to deal with the limited exceptions when an asset cannot be transferred.

Costs

The "costs" disclosure in the Educational Communication is also unnecessary and redundant, particularly since investors already get specific information to evaluate their decision to transfer assets. As the SEC states in its investor publication, "[y]our old firm may charge you a fee for the transfer to cover administrative costs. Sometimes, the new firm will also charge a fee. **These fees are typically spelled out in your account agreements with the firms."**[28]

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22 *Id*. (emphasis added).

23 *See* FINRA, *Understanding the Brokerage Account Transfer Process* ("FINRA Investor Publication Regarding the Brokerage Account Transfer Process") (emphasis added), available at http://www.finra.org/investors/understanding-brokerage-account-transfer-process.

24 *See* DTCC website, available at http://www.dtcc.com/clearing-services/equities-clearing-services/acats.aspx.

25 *See generally* FINRA Rule 11870.

26 FINRA Rule 11870(C)(1)(D).

27 *See* FINRA Regulatory Notice 07-06 (Supervision of Recommendations after a Registered Representative Changes Firms) (Feb. 2007) ("RN 07-06") at 3, available at https://www.finra.org/sites/default/files/NoticeDocument/p018630.pdf.

28 *See SEC Investor Publication Regarding Transferring Brokerage Accounts*, *supra* note 21 (emphasis added).

Investors who are worried about the short-term costs they will experience during the account transfer process, e.g., termination fees or transfer fees, can simply refer to their existing account disclosure documents. Investors who are concerned with the long-term costs to move firms will be able to evaluate these fees around the time they establish a new account at the recruiting firm. Most firms provide their customers with account agreements and schedule(s) of fees at the time they establish an account. Many firms publish their fee schedules online. Accordingly, investors already have helpful information than is provided by this section of the Educational Communication.

Products and Services

Two of the five issues highlighted in the Educational Communication raise topics related to the products and level of services that may (or may not) be available at the transferring representative's new firm. FINRA has not offered any evidence that this is a frequent or significant problem customers face. Common sense dictates that representatives who transfer firms want to be able to offer the same or better products and services to their customers. Therefore, they will tend to transfer to a firm that will enable them to keep their former customers' business. Situations where this is not the case are likely to be the exceptions rather than the rule, and these exceptions should not drive additional costly and potentially confusing disclosure requirements. Absent compelling evidence of a significant issue and lack of adequate information, these disclosures in the Educational Communication are unwarranted.

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In sum, the current disclosure regime governing the transfer of assets process is comprehensive and is adequately designed to provide investors with timely disclosure of material issues that may arise during the account transfer process. The proposed Educational Communication will create significant burdens, and is potentially confusing for investors because it relates to what are narrow and infrequent exceptions rather than issues affecting a large number of clients. Absent a systemic problem associated with transferring assets among firms or one that demonstrates that investors lack sufficient information to make educated decisions, FINRA should not create an overly complex disclosure regime that will create significant, ongoing expenses for firms.

VI. DELIVERING THE EDUCATIONAL COMMUNICATION WITH ACCOUNT OPENING PAPERWORK IS A BETTER SOLUTION

For the reasons stated above, HD Vest does not believe that the proposed Educational Communication is necessary, and will be potentially confusing to clients. However, if FINRA decides to move forward with an Educational Communication, a better and less much less costly approach would be to allow firms the flexibility to send the Educational Communication with account opening paperwork. Existing rules already require firms to send customers prompt written notification after an account is established.[29] Thus, a new disclosure regime would not

[29] *See* 17 C.F.R. § 240.17a-3(a)(17)(i)(B)(1).

need to be created because the delivery requirement can more easily be incorporated into existing processes, thereby significantly lessening the burden on firms.

The Proposed Rule already permits firms to include the Educational Communication with account transfer documentation if the former customer was not solicited by the transferring representative.[30] Therefore, some former customers will receive the communication at that time even though the information it contains is equally applicable to them. This approach is much more sensible because firms can incorporate the Educational Communication into existing processes for delivering information to new clients, and it removes the complexity associated with trying to comply with the Proposed Rule and Reg. S-P.

VII. FIRMS THAT DO NOT PAY MATERIAL RECRUITMENT COMPENSATION SHOULD BE EXCEPTED FROM THE PROPOSED RULE

The Proposed Rule should contain meaningful thresholds that trigger disclosure obligations to minimize the costs and burden of compliance, especially for firms where some or all of the issues are not relevant. The driving force behind Proposed Rule 2243 was the perceived need to highlight potential conflicts of interest if representatives who switched firms were paid significant levels of recruitment compensation. The Proposed Rule has gone well beyond that original intent, and now stands to impose significant costs on every firm. Firms that do not pay material compensation to induce representatives to transfer firms should not be required to send general and irrelevant disclosures to investors. RN 15-19 does not specify whether the members of FINRA's "test group" – or any investor – would find the recruitment compensation disclosures in the Educational Communication helpful if their representative was not in fact paid material recruitment compensation.

For these reasons, HD Vest recommends including a $100,000 *de minimis* exception in any rule that is adopted – the same approach FINRA previously proposed.[31] A one-size-fits-all" approach is deeply flawed.

VIII. DELIVERY OF THE EDUCATIONAL COMMUNICATION SHOULD NOT BE REQUIRED FOR APPLICATION WAY ACCOUNTS

Firms should not be required to deliver the Educational Communication when a former customer holds an account directly with a product sponsor, e.g., a mutual fund company or an insurance company, and the only change is a substitution of broker-dealers associated with their account. Broker-dealer of record change requests are routinely processed by product sponsors, and do not even potentially raise the concerns addressed in the Educational Communication with respect to brokerage account transfers. If the recruiting firm has a servicing or dealer agreement with the product sponsor and the recruiting firm can continue to service a customer's mutual

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30 *See* Proposed Rule 2271(b)(2).

31 *See* Proposed Rule 2243, *supra* note 4, at 2. FINRA defined recruitment compensation as including upfront payments, such as cash bonuses or forgivable loans, and potential future payments, such as performance-based bonuses or special commission schedules that are not provided to similarly situated registered persons.

fund or variable product, the Educational Communication will add no value and instead will cause greater confusion.

IX. FIRMS SHOULD BE PERMITTED TO SEND AN ALTERNATIVE EDUCATIONAL COMMUNICATION

While HD Vest does not believe the Proposed Rule is necessary or warranted, if it is adopted firms should be permitted to deliver an alternative educational communication. FINRA should amend the rule to allow firms to create their own educational communications as long as agreed-upon universal disclosure language is included. This would allow firms to brand their own educational communication, and include it in other documents that may already be provided instead of having to include a completely separate document. Additionally, firms should be allowed to customize an educational communication by providing relevant their telephone numbers that would inform investors who to call with specific questions.

X. RESPONSES TO FINRA'S SPECIFIC REQUESTS FOR COMMENT

A. Customers Should Not Be Required To Affirm Receipt of the Educational Communication.

Customers should not be required to affirm receipt of the Educational Communication, nor should they be required to acknowledge that they have read the document. Disclosure documents of much greater significance than the Educational Communication are routinely sent to customers and they are not required to affirm receipt. Considering the general "educational" nature of the disclosures – and the fact that many of the disclosures will not even be relevant to most customers – there should be no requirement to have customers affirm receipt. Imposing such a requirement would add additional burdens to the already complex compliance process firms will have to create, and is not warranted.

If this requirement is adopted, FINRA should clarify whether a customer's verbal acknowledgement (to the firm or a transferring representative) is adequate, or whether a written acknowledgement needs to be obtained. A written acknowledgement requirement would add even more unnecessary cost because the Educational Communication does not contain a signature line for capturing customer signatures, so firms would need to devise a separate way to capture the affirmation. Importantly, if this requirement is adopted, FINRA should clarify that memorializing the former customer's affirmation is not a condition precedent to establishing an account. Regardless of the method proposed for tracking affirmations, this requirement would potentially harm customers by significantly slowing down their ability to transfer assets among firms.

B. The Educational Communication Should Only Be Sent To Former Customers.

Firms should not be required to send the Educational Communication to "all customers recruited by or assigned to the transferring representative during the six months after transfer to the recruiting firm." This would expand the requirement to *new* customers (if recruited by the representative) or *existing* customers (if reassigned to the representative by the firm). Expanding the universe of customers who must receive the Educational Communication would increase compliance costs and impose additional tracking burdens that are not warranted. Also, providing Educational Communication to existing customers of the firm makes absolutely no sense because the considerations are relevant only to those transferring assets from another firm.

C. Firms Should Only Be Required To Send The Educational Communication For Two Months.

Requiring firms to send the Educational Communication for a period of two months instead of six months is appropriate because transferring representatives typically contact former customers to discuss changing firms in the first two months of joining a new firm. Shortening the delivery requirement time frame would lessen the burden on firms and maximize the effectiveness the Educational Communication may offer investors.

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In sum, the Proposed Rule would be very difficult (if not impossible) to comply with, and would impose significant costs on member firms. On the other hand, it will not materially enhance customer protection because the considerations addressed are not widespread and customers already receive sufficient information to make decisions when there are limited exceptions. Rules with very high costs and marginal potential benefit should not be adopted. HD Vest urges FINRA not to adopt this Proposed Rule, especially in its current form.

Sincerely,

Eric Chartan
Associate General Counsel
HD Vest Financial Services