



## FINRA Rule 2273– Educational Communication Related to Recruitment Practices and Account Transfers

September 22, 2016

Recently approved FINRA Rule 2273 will require a member firm which hires or associates with a broker to send out FINRA's form educational communication to that broker's former customers whenever: (1) the firm, directly or through such broker, individually contacts the former customer to transfer assets, or (2) the former customer, absent individualized contact, transfers assets to an account assigned, or to be assigned, to the broker at the recruiting member firm. The Rule is intended to provide former customers with a more complete picture of the potential implications of a decision to transfer assets to the recruiting firm. The Rule becomes effective on **November 11, 2016**.

The questions posed by the educational communication highlight:

- whether financial incentives received by the broker from the recruiting firm create a conflict of interest;
- that some assets may not be directly transferable between firms and as a result the customer may incur cost to liquidate and move those assets or account maintenance fees to leave them at the current firm;
- potential costs to transfer assets to the recruiting firm and differences in fees between the firms; and
- differences in products and services between the firms.

The content and timing of delivery of the form are meant to prompt customers to engage in a conversation with the transferring representative

(and, if needed, the customer's current firm) about important considerations concerning switching firms before making the decision to transfer assets.

### **Requirements Under The Rule:**

The requirement to send the educational communication applies only for the first three months of the representative's employment or association with the recruiting firm. A "former customer" means any customer that had a securities account assigned to the registered representative at his or her previous firm. The Rule does not obligate a broker to contact former customers.

Nevertheless, if the first individualized contact is in writing, the educational communication must accompany that written contact, and if such communication is by electronic means, the recruiting firm may hyperlink to the educational communication. Where the first individualized contact is an oral communication, the broker must notify the customer at the time of such contact that an educational communication that includes important considerations in deciding whether to transfer assets will be delivered in no more than three business days. In such case, the Rule requires the educational communication be sent within such three business day period or with any other documentation sent to the former customer related to transferring assets to the recruiting firm, whichever is earlier. If the former customer seeks to transfer assets to an account assigned, or to be assigned, to the broker at the recruiting firm, but no individualized contact occurs before the former customer seeks to transfer, the recruiting firm must deliver the

educational communication along with the account transfer documents.

In the event that the former customer expressly states that he or she is not interested in transferring assets to the recruiting firm, an educational communication need not be delivered. However, if that former customer subsequently decides (within the three month period following when the broker begins his or her employment or association with the recruiting firm) to transfer assets to the recruiting firm without further individualized contact, then the recruiting firm must deliver the educational communication with the account transfer documents.

### **What Constitutes Individualized Contact?:**

FINRA believes that a broad range of communications would constitute individualized contact triggering delivery of the educational communication under the Rule. FINRA Regulatory Notice 16-18 provides the following specific examples of communications that may constitute individualized contact requiring delivery of the educational communication: (1) informing the former customer that he or she is now associated with the recruiting firm; (2) suggesting that former customer consider transferring his or her assets or account to the recruiting firm; (3) informing the former customer that the recruiting firm may offer better or different products or services; or (4) discussing with the former customer the fee or pricing structure of the recruiting firm. The Rule does not distinguish between when the broker or former client initiated the contact.

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Furthermore, oral or written communications to a group of former customers, including but not limited to mass mailing of information, sending copies of information via email, or automated phone calls or voicemails, also constitutes individualized contact.

### **Potential Implications of the Rule:**

Compliance departments will need to ensure that procedures are implemented to comply with Rule 2273 including training new recruits and monitoring for individualized contact so that the educational communication can be sent in a timely manner. FINRA expects that representatives reasonably should know whether an individual had an account assigned to him or her at the representative's prior firm and whether the representative has contacted the customer regarding transferring assets to the recruiting firm. In many ways compliance with the Rule hinges on the new recruit being aware of his or her obligations and communicating with the recruiting firm whether and when he or she had individualized contact to transfer assets and when a former customer transfers assets even absent individualized contact. Particular emphasis should be provided in training new recruits regarding the obligations arising where the individual contact occurs orally. Such training must include instruction on how the new recruit in such case needs to notify the former customer that an educational communication

“concerning important considerations in deciding whether to transfer assets” to the new firm will be provided within three business days of the contact. Firms will need to ensure their supervisory systems track communications soliciting new business from former customers. Although not required, firms may choose to retain a client acknowledgement of receipt and review of the educational communication to evidence compliance.

In its response to commenters on the proposed Rule, FINRA expressed that it did not intend the provision of the educational communication to have any relevance to a determination of whether a representative impermissibly solicited a former customer in violation of a contract. FINRA also stated its belief that, in most instances, a former customer will not be contacted in the first instance unless the representative or recruiting firm already has his or her contact information. The impact of the Rule on litigation over alleged violations of nonsolicit and confidentiality obligations remains to be seen. Since the Regulatory Notice specifically states that merely informing the former customer that the broker is now associated with the recruiting firm may constitute individualized contact that would trigger the delivery requirements, the practice of *targeted* announcement communications - which firms and brokers argue (with varying degrees of success) is not solicitation - may need to be reassessed. The former firm's detection and proof of impermissible client contact by the

departing broker may or may not be easier in light of the mandated transmission of the educational communication to everyone receiving individualized contact to transfer assets. It is not yet known whether the conversation triggered by the educational communication will allow a better opportunity for the former firm to retain the clients assigned the departing broker.

In any event, the Rule will have a significant impact on the transition of brokers between firms.

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For the full text of Regulatory Notice 16-18 accompanied by the Rule and the form educational communication, please visit: [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-16-18.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-18.pdf)

For the full text of the SEC's approval of the adoption of Rule 2273, please visit: <https://www.sec.gov/rules/sro/finra/2016/34-77430.pdf>