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# FINRA Sends Broker Bonus Plan to SEC for Approval

After reviewing the proposal, the SEC could put it out for public comment or approve it

By Melanie Waddell, ThinkAdvisor Washington Bureau Chief Investment Advisor Magazine

The Financial Industry Regulatory Authority took another step forward in mid-March to require brokers to disclose recruitment compensation paid to them as an incentive to move to a new firm by sending the plan to the Securities and Exchange Commission for approval.

The regulator raised the threshold of payments that would need to be reported. Rule 2243, approved by FINRA's board last September, would apply to recruitment compensation — including signing bonuses, up-front or back-end bonuses, loans, accelerated payouts and transition assistance — of $100,000 or more, and to future payments (trade-based or asset-based) contingent on performance criteria.

Earlier last year, FINRA proposed a $50,000 threshold.

FINRA states in its proposal sent to the SEC that the rule change would "provide former customers of a representative with a more complete picture of the factors involved in a decision to transfer assets to a recruiting firm. FINRA believes that former customers would benefit from information regarding recruitent compensation packages and such other considerations as costs, fees and portability issues that may impact their assets before they make a decision to transfer assets to a recruiting firm."

Jon Henschen of the BD recruiting firm Henschen & Associates told ThinkAdvisor in a previous interview that the change is a “positive” development.

However, he said that “this higher amount will make this a nonevent for many of the independent reps making moves since most of the independent packages fall under this benchmark.”

But “for those independent broker-dealers that offer higher forgivable notes up to 40%, this [higher disclosure amount] will have a negative impact on recruiting efforts. But for the firms that stick to notes in the 10%-20% range, or for the majority of firms that only cover initial transition expenses, this will have little to no impact on daily recruiting efforts.”

Joshua Horn, with the law firm Fox Rothchild, agrees in a recent blog post that FINRA's rule, if approved, "will have a chilling effect on the movement of registered representatives." Horn also challenges the rationale for FINRA's proposal.
"FINRA’s rationale for the rule is that it would clarify potential costs that customers incur when they move their accounts from one member firm to another," Horn writes. "FINRA cited, for example, costs to close the account at the first firm, as well as tax consequences associated with the liquidation of investments that are not transferable."

However, he says, "This rationale does not make much sense when considered more fully. These so called costs should be disclosed to a customer who closes an account regardless of the reason. Tying it to compensation paid to a broker who intentionally fails to advise her client about costs rings a bit hollow for a justification."

The opposing view to this rule, he continues, "is that it will have a chilling effect on the movement of registered representatives. After all, who would want their clients knowing how much they were paid to move from one firm to another."
If registered reps "are honest with their clients about the costs associated with closing and moving an account, there would be no need for this rule," Horn says. It unfortunately seems as though FINRA is letting the actions of the minority impact the majority of brokers who move firms. FINRA and the SEC should do more to weed out the bad seeds rather than punish those who are honest with their clients."

After reviewing the proposal, the SEC could then put the proposal out for public comment or approve it.

If ultimately approved, brokers would need to disclose their recruitment compensation to any clients that follow them to their new firm for a year after the broker's move.

The proposal contains two components: a disclosure obligation and reporting to FINRA on “significant increases in total compensation” paid to newly recruited reps.

Firms would be required to disclose to their customers the compensation paid to the transferring representative in ranges. The first range would be $100,000 to $500,000; the next would be $500,000 to $1 million; increasingly larger bands would follow.

In addition, firms would be required to report to FINRA significant increases in total compensation paid to a newly recruited representative during the first year.

“The trigger for reporting would be an expected increase of 25% or $100,000 over the prior year's compensation, whichever is greater,” FINRA says. “This information will be used in risk-based examination targeting to look for sales abuses that may be motivated by the increased compensation and to inform any future rulemaking related to compensation incentives.”